



*West Virginia Environmental Council's*

# GREEN Legislative Update

*Published Weekly During West Virginia's Legislative Session*

Volume: 22 Number: 6

Date: **February 20, 2012**

## **Under the Dome**

*By Donald S. Garvin, Jr.*

*WVEC Legislative Coordinator*

### **Week 6 – Bills, Bills, Bills**

We are two-thirds of the way through the 2012 Legislative Session, and Monday, Feb. 20th, is the last day for new bills to be introduced in each chamber.

So it was no surprise to see the large number of new bills that were added to the House and Senate calendars each day last week.

Of course, each and every one of these bills is of vital importance to the citizens of West Virginia. Take, for example, HB 4594. It will be introduced today (Monday) by Del. Ray Canterbury (R-Greenbrier), and if passed it would require “inclusion of science fiction reading material in certain existing middle school and high school courses.”

Now, I really like Del. Canterbury. He is a serious thinker who thinks critically about the important energy issues facing this planet. So I can only assume that he believes it is critical for the education of students in WV to be exposed to science fiction. I guess I will just have to ask him.

However, it was a surprise this week to see how quickly some of these new bills were being considered by committees. It really caught the WVEC lobby team off guard, as we scrambled to read and understand these new bills, and meanwhile continue to work on the legislation we have been pushing since the beginning of the session.

The best example of this is HB 4530 and SB 584, the AEP debt retirement bond issue bill that you will read about in this issue of the *Legislative Update*. Both bills were introduced on Tuesday, Feb. 14 and we were told that House Finance was going to move its bill on Friday. What a wonderful Valentine's Day gift from the power companies!

So I am going to cut this column short so we can update you on more of the legislation that is moving through the process at the moment.

Our fine-feathered friends are beginning to display their spring mating colors, so keep your bird feeders full and enjoy the show.

## **House Finance Limits AEP Bond Bill to Current Debt**

The House Finance Committee passed HB 4530 Monday morning granting the Public Service Commission the authority to allow electric utilities to issue bonds to finance unrecovered fuel cost operating expenses. The motivation for the bill is Appalachian Power's approximately \$350 million unrecovered fuel costs balance that remains, despite the PSC's efforts to retire the debt through significant rate increases over the past four years. The bonds will be secured by the money collected from future ratepayers.

WVEC and others asked for a public hearing on the bill last Thursday, which was granted with four hours notice Friday afternoon. Utility watchdog groups argued at the hearing that while the bond plan might make financial sense in Appalachian's current situation, the introduced version of the bill went too far in allowing electric utilities to apply for such bond issuances in the future.

Someone must have been listening to us - the version of HB 4530 passed this morning amended the bill to limit the bond only to paying down Appalachian's current fuel debt. This was a big victory for us – and for ratepayers!

Appalachian's fuel debt was largely caused by a spike in the international coal market in 2008 when the utility entered into long-term contracts for coal that locked in high prices. The average price of coal has continued to rise about 70% in the past five years. Instead of shifting their fuel mix away from high priced coal, Appalachian Power managers now plan to acquire additional coal-fired generation.

“We are very pleased that the House Finance Committee listened to concerns about the dangers of pushing current operating costs onto future ratepayers and limited the bond issuance only to Appalachian's current fuel debt,” said Gary Zuckett, executive director of West Virginia Citizen Action Group and co-founder of Energy Efficient West Virginia. “We now need to prevent a similar crisis in the future. We are concerned that Appalachian Power is still not making long-term investment decisions that will be in the best interest of its customers.”

To avoid a recurrence of the rate crisis that precipitated this legislation, the Coalition for Reliable Power, Energy Efficient West Virginia, the W.Va. Environmental Council, and the League of Women Voters believe that least-cost planning is more important than ever to effect a long-term solution to rising electric rates.

The groups are advocating for Senate Bill 162, which would require electric utilities to provide long-term plans to the Public Service Commission showing how they can meet future electric demand at the lowest cost to customers. This “least-cost planning” concept has existed since the late 1980s and more than half of states have adopted some form of long-term utility planning.

“If we'd had least-cost planning in place ten years ago, maybe we wouldn't be in as much of a mess now. Least-cost planning is an actual solution to rising electric rates, rather than the band-aid proposed by HB 4530,” commented Keryn Newman of the Coalition for Reliable Power.

The bill now moves to the floor for full House consideration.

## **DEP Proposes Changes to Narrative Water Quality Standards**

In the last 10 days legislation has been introduced that would “establish a procedure by which the Department of Environmental Protection is to measure compliance with the biologic component of the narrative water quality standard.”

The bill numbers are SB 562 and HB 4518.

The bill amends ARTICLE 11. WATER POLLUTION CONTROL ACT, §22-11-7b. and sets forth the following public policy:

“Measuring compliance with the biologic component of West Virginia’s narrative water quality standard requires evaluation of the holistic health of the aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic community that is diverse in species composition; (ii) contains appropriate trophic levels of fish, in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is composed of benthic invertebrate assemblages sufficient to perform the biological functions necessary to support fish communities within the assessed reach, or, if the assessed reach has insufficient flows to support a fish community, in those downstream reaches where fish are present.”

On Thursday the Senate Natural Resources Committee passed out a committee substitute for SB 562. The bill now goes to Senate Judiciary. We are only now beginning to analyze the language in the bill.

## **DEP Seeks to End State Greenhouse Gas Reporting Program**

On Thursday the Senate Energy, Industry and Mining Committee passed SB 496, which would end the West Virginia inventory of greenhouse gas emissions.

Instead, the bill allows reporting of greenhouse gases under the United States Environmental Protection Agency's Mandatory Reporting of Greenhouse Gases Rule to satisfy greenhouse gas reporting requirements in West Virginia.

The WV greenhouse gas emissions' inventory program was established by the Legislature in 2008, at the request of DEP Cabinet Secretary Stephanie Timmermyer. At the time, Timmermyer argued that it would be to industry's advantage to establish a baseline of their emissions before the federal government began to require emission reductions.

SB 496 now goes to Senate Judiciary for consideration. The bill is the same as HB 4319, which is referred to House Judiciary. The Senate Judiciary committee has already approved a DEP air rule eliminating the same provisions.

DEP has told both committees that the state reporting provisions are no longer necessary. However, DEP Division of Air Quality staff did tell the Judiciary Committee that the WV inventory does account for about 10% more emissions than covered under the federal program.

### **“Complete Streets” Bill Advanced, Weakened by Committee**

On Wednesday the House Roads and Transportation Committee advanced the “Complete Streets” bill – HB 4074 – to House Finance, but not before significantly weakening its provisions.

As originally proposed the bill would have given “bicycle, pedestrian and transit ways full consideration in the planning and development and redevelopment of state roads, railways and waterways.”

“Complete streets” involves adding non-motorist features to community planning efforts. These could be sidewalks, crosswalks, bicycle lanes, curb ramps and traffic signals.

AARP has made “complete streets” a key part of its agenda this session.

Before passing the bill, the committee removed language that required the Division of Highways to include these features in its planning. The bill's mandates still apply to municipalities.

HB 4074 is the same as SB 609.

***Think Renewable***



## **HB 4511 Passes Out of Committee Shale Research, Education, Policy and Economic Development Center?** *By John Christensen, WVEC*

HB 4511 passed out of the House Education committee (with amendments) last week, creating a WVU Shale Research Center.

The bill looks pretty benign at first glance, but after Del. Marty Gearheart (R-Mercer) removed - by committee amendment - any mention of carbon, methane, and CO<sub>2</sub> (emissions) I knew there was more to it.

WVU Vice-President of Corporate and Legal Affairs, William Hutchens, explained to the committee members this was a way for WVU to become a hub to facilitate “prudent development” of natural gas and liquid hydrocarbons from West Virginia shale resources.

Hutchens said WVU research-driven analyses will not only help train in-state workers and develop curriculums for WV community colleges, but also serve as a source of information available to foreign countries to participate in the innovative research center’s data.

He even went on to say that a planned working shale well (training laboratory) will be built as part of the center’s overall scheme that will have all the necessary equipment to monitor and measure many environmental impacts of shale drilling.

The bill was sold to the committee with a fact sheet that ended: “Assist state agencies including the WVDEP, WV State Tax Dept, the WV Geologic and Economic Survey to develop a transparent, efficient and effective environment to manage our oil and natural gas resources for the benefit of all the states citizens.” Yeah right!

The biggest problem with this bill is that the committee removed all mention of state government funding for the center. That means the center will have to rely on industry funding, which could certainly bias *any* work the center performs.

Stay tuned to this bill’s further progress as it now goes on to House Finance.

## **House Extends Timber Severance Tax Exemption**

On Thursday the House passed HB 4087 which would continue to exempt the timber industry from severance taxes, as proposed by Gov. Tomblin.

Tomblin’s proposal would continue to exempt the industry until around 2016. That’s when a smaller portion of severance tax proceeds is scheduled to pay off a debt related to the former workers’ compensation program.

The Legislature granted the timber industry a four-year break from severance taxes in 2009, when the industry complained that it was ailing because of the recession.

The House bill has now been referred to Senate Finance.

## **Legislation Would Increase Special Reclamation Tax**

The Senate Energy, Industry and Mining Committee passed SB 579 on Thursday, advancing it to Senate Finance for further consideration.

The bill would continue and re-impose the special reclamation tax. It also increases the rate from 14.4 cents to 27.9 cents per ton of clean coal mined. Fifteen cents of that amount will be deposited into the Special Reclamation Water Trust Fund, and used for water treatment at abandoned mine sites.

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

DEP's Special Reclamation Advisory Council voted to propose the tax increase in January, with the support of the West Virginia Coal Association.

A fiscal note attached to the bill from the State Tax Department says the bill will result in an increase in the Special Reclamation Tax from roughly \$19 million per year to roughly \$36 million per year. Of that amount, the Special Reclamation Water Trust Fund would receive roughly \$20 million per year.

SB 579 is the same as HB 4519.

Leslee McCarty reports that something *strange* happened in the EIM meeting. Senator Ron Stollings called on industry to speak to the bill and Bill Raney got up on behalf of the WV Coal Association. Senator Stollings quizzed him about something seemingly unrelated - coal slurry injection and various other ways to deal with slurry. Raney took that opening to editorialize about coal slurry, saying that there was no evidence that slurry had contaminated any water supplies. Excuse us, Bill, but we beg to differ!

If only that hadn't happened, we might have been able to say Coal did the right thing. Now we have to say they did something right but then ruined it and just lied when the truth would have suited better. Too bad.



## Tax Credit for Composting Languishing in Senate Finance

SB 40, a bill that would encourage businesses to compost garbage, landscape waste and food, was passed out of Senate Judiciary Committee on January 19 but has still not been taken up by Senate Finance a month later.

The bill would provide businesses a tax credit up to \$2,000 for composting certain types of garbage, landscape waste and food. The bill sets forth eligibility for the credit. The bill also grants rule-making authority.

The sole sponsor of the bill is Sen. Orphy Klempa (D-Ohio). This is a no-brainer and would have minimal fiscal impact on the state.

## A Special Valentine's Day Dinner

Valentine's Day was made special for the Lobby Team and their hosts this year by D.L. Hamilton. In what is becoming a great tradition here in Charleston, D.L. invited us over to dinner, along with the folks who open their homes to us during session.



WVEC lobby team and friends. Valentine's Day dinner – during "The Legislature Today".

We thank DL for hosting us at a fabulous meal and thanks to all the great people who put us up and put up with us during session (Mary Ellen O'Farrell, Robin Godfrey, Sally Swisher, Ann Garcelon!)



Don Garvin looks on ... John interviewed February 14<sup>th</sup> on "The Legislature Today"

In addition to the general good fun, we got to watch our own John Christensen being interviewed on Public Broadcasting by Beth Vorhees. He did a great job and we had a wonderful evening.

To watch the interview: <http://www.wvpubcast.org/newsarticle.aspx?id=23945>



## **Senate Economic Development Committee Moving Bills**

Last week the Senate Economic Development Committee passed SB 8, the “Creative Communities Development Act.”

The purpose of the bill is “to develop a matching grant program to foster the development of creative communities in West Virginia.”

Language in the bill states that, “The public policy of the state will be served through a matching grant pilot program designed to foster innovative planning to enhance communities with the following key foundations of economic and environmental sustainability, including:

- (A) Providing access to technological advances among citizens, business, nonprofit entities, and governmental entities;
- (B) Developing community centers, arts, historical, cultural and recreational facilities;
- (C) Providing aesthetic improvements to existing communities and infrastructure;
- (D) Fostering academic innovation in kindergarten through twelfth-grade and lifelong learning programs;
- (E) Fostering the development of diversity and inclusiveness programs that help bridge ethnic, socioeconomic, historical and cultural divides; and
- (F) Fostering the development of renewable and alternative energy sources.”

This bill was recommended for introduction and passage by the Joint Interim Committee on Economic Development. The bill has now been advanced to Senate Finance.

Also last week the committee passed and advanced to Senate Finance SB 552, the “WV Land Stewardship Corporation Act.”

“The purpose of this bill is to authorize the creation of a public nonprofit corporation and governmental instrumentality under the provisions of article two, chapter thirty-one-e of the code, to collectively address several environmental and economic development programs. The corporation is established to promote the productive reuse of idled and underutilized commercial, industrial and mining properties; to support more efficient use of existing public infrastructure; encourage increased job creation with living wages; and renewed community vitality and tax revenue generation while protecting public health and our natural resources.”

This is a complex piece of legislation. At the moment, we are convinced that the bill does not relieve any entity of liability for environmental clean up responsibilities. At our request, the committee added a member appointed by the West Virginia Environmental Council to the board of directors of the corporation. We will continue to examine this bill further.

## **Senate Passes ‘Marcellus Principles’ Resolution**

On Feb. 10 the Senate passed by voice vote SR 12, a resolution that urges the Marcellus shale industry to abide by “Marcellus Principles.”



The resolution doesn't make law, but it urges the industry to adopt four "Marcellus Principles":

- Employ community workers to fill all industry jobs.
- Be responsible stewards of the land.
- Maintain open communication lines with stakeholders to ensure public safety.
- Respect and apply these principles with integrity and transparency.

It asks the industry to respond with a written endorsement. Copies will be forwarded to the West Virginia Oil and Natural Gas Association (WVONGA) and the Independent Oil and Gas Association of West Virginia (IOGA).

Sen. Orphy Klempa (D-Ohio) was the lead sponsor of the resolution, with every senator signed on as co-sponsors. During the floor session Sen. Karen Facemyer (R-Jackson) asked for her name to be removed as a sponsor.

### Senate Bills We Are Tracking

Bill Number	Title	Committee
SB 8	Creating Creative Communities Development Pilot Program	<b>To Finance</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	<b>To Finance</b>
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	<b>To Finance</b>
SB 402	Streamlining legislative rule-making review process ( <i>Devil in the Details</i> )	Judiciary
SB 466	Creating Alternative Coal Slurry Disposal Act ( <i>Incentives Only</i> )	<b>To Finance</b>
SB 496	Modifying DEP requirement of greenhouse gas emissions inventory	<b>To Judiciary</b>
SB 497	Awarding attorney fees and costs in mining permit appeals ( <i>DEP Bill</i> )	<b>On 2nd Reading</b>
SB 522	Creating WVU Shale Research Center	Education
SB 529	Compliance credit requirements for alternative and renewable energy sources	EIM
SB 537	Creating WV Sustainable Wealth Fund	Econ Dev
SB 552	Creating WV Land Stewardship Corporation Act ( <i>Devil in the Details</i> )	<b>To Finance</b>
SB 562	Regarding DEP narrative water quality standard	<b>To Judiciary</b>
SB 570	Requiring DEP maintain Office of Internal Auditing	Gov Org
SB 579	Increasing special reclamation tax on clean coal mined ( <i>Good Bill</i> )	<b>To Finance</b>
SB 584	Authorizing PSC issue consumer rate relief bonds ( <i>Terrible Bill</i> )	Judiciary
SB 592	Requiring public construction projects comply with International Energy Code	Gov Org
SB 604	Authorizing legislative rules relating to green plumbing	Gov Org
SB 609	"Complete Streets" Bill	Transportation



SB 615	Conforming WV Water Pollution Control Act with federal Clean Water Act ( <i>Bad Bill</i> )	Nat Res
SB 624	Permitting transfer of alternative-fuel motor vehicles tax credit	Econ Dev
SB 645	Authorizing DEP grant counties and municipalities certain litter disposal exemptions	Gov Org
SB 653	Creating WV Innovation and Development Act	Econ Dev
SB 654	Creating coal severance tax credit	EIM
SB 658	Creating Energy Intensive Industrial Consumers Revitalization Tax Credit	Econ Dev

## House Bills We Are Tracking

Bill Number	Title	Committee
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 restricting 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	Permitting surface owners purchase the mineral interests at tax sales ( <i>In Subcommittee</i> )	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 ( <i>Great Bill</i> )	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 4074	“Complete Streets” Bill	<b>To Finance</b>
HB 4086	Governor’s ethane “cracker” plant tax credit bill	<b>Signed by Governor</b>
HB 4087	Continuing the discontinuance of timber severance tax	<b>To Senate Finance</b>
HB 4094	Eliminating timber severance tax for additional three years	Finance
HB 4249	Reducing utility rates for low-income residential customers	<b>To Finance</b>
HB 4283	Awarding attorney fees and costs in mining permit appeals ( <i>DEP Bill</i> )	Judiciary
HB 4313	Requiring that the building code be the state building code	<b>To Judiciary</b>
HB 4316	Prohibiting underground injection of coal slurry ( <i>Sludge Safety Project Bill</i> )	EIL
HB 4319	Modifying DEP requirement of greenhouse gas emissions inventory	<b>To Judiciary</b>
HB 4363	Energy efficiency for electric and gas utilities ( <i>EEWV Bill</i> )	Judiciary
HB 4416	Extending WV Supreme Court Public Campaign Financing Pilot Program	Judiciary
HB 4437	Permitting certain ski resorts to be limited gaming facilities	Judiciary
HB 4446	Relating to oil and gas severance taxes collected	Judiciary
HB 4457	Eliminating the real property tax on non-producing mineral estates	Judiciary
HB 4473	Dedicating a portion of natural gas severance tax proceeds	Finance
HB 4492	Requiring certain licensees to take continuing education in green building	EIL
HB 4494	Continuing education requirement of building code inspectors	<b>To Finance</b>
HB 4498	Compassionate Use Act for Medical Cannabis	Health
HB 4499	Relating to oil and gas severance taxes	Finance
HB 4511	Creating WVU Shale Research Center	<b>To Finance</b>
HB 4518	Regarding DEP narrative water quality standard	Judiciary
HB 4519	Increasing the special reclamation tax	Judiciary
HB 4530	Authorizing PSC issue consumer rate relief bonds ( <i>Terrible Bill</i> )	<b>Passed Finance</b>

HB 4571 Comprehensive recycling program for electronic devices	Judiciary
HB 4598 Prohibiting the use of single-use plastic bags by stores	Judiciary
HB 4609 Clarifying that DEP does not assume a mine operator's obligations or liabilities	EIL
HB 4619 Relating to alternative fuel initiatives	EIL
HB 4624 Abolishing the Solid Waste Management Board	Gov Org
HB 4629 Permitting transfer of tax credits for purchase of alternative-fuel vehicles	EIL
HB 4631 Relating to dual liner requirements	Judiciary
HB 4632 Creating Energy Intensive Industrial Consumers Revitalization Tax Credit	Finance
HB 4640 Establishing pilot program on the disposal of unused pharmaceuticals	Health
HB 4641 Awarding credits for use of alternative and renewable energy resources	EIL
HB 4643 Removing prohibition against disposal of electronic devices in landfills	Gov Org
HB 4646 Requiring "least-cost" planning by electric utilities ( <i>EEWV Bill</i> )	Gov Org

(NOTE: SB 253 is the Senate DEP rules bundle).

 **Calendar of Events** 

**March 2:** Remembering 40 Years of Blackwater: Buffalo Creek to Today. WV State Capitol. 2 – 5 PM. Memorial event. Sponsored by Sludge Safety Project.

**March 5:** Coal Heritage Public Lecture Series: "Violence in the Coal Fields" by Paul Rakes, former coal miner and currently on the faculty of WVU-WV Tech. He recently completed research and published an article about the early coal camps and the violence that was a way of life for coal miners. Location: Beckley Center of Concord University, Beckley WV. Room E10, Erma Byrd Higher Education Center on Airport Road. 7 PM. Free and open to the public.

**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.)

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**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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