



West Virginia Environmental Council's

GREEN Legislative Update

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Under the Dome

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

Week 8 – Session Winding Down

There are just six days remaining in the 2012 Regular Session of the West Virginia Legislature. Last Monday was the last day for bills to pass out of the committee of origin, and Wednesday was the last day for bills to pass out of the house of origin.

So, many bills are dead – both the good and the bad. You will notice that we have removed all the dead bills from our Bill Tracking List.

The day before the session began I happened to have brief meetings with both the Speaker of the House and the Senate President.

The Speaker, Rick Thompson (D-Wayne) told me he did not think that the members wanted to revisit now the Marcellus shale regulatory bill passed in the December special session.

When asked the same question, the President, Jeff Kessler (D-Marshall) replied, “The ink’s barely dry on the bill.”

And that’s basically how it has played out. Not one bill to improve the provisions of the Marcellus bill was introduced in the Senate. And even though Del. Mike Manypenny (D-Taylor) sponsored more than twenty bills to improve the Marcellus bill, not one of them was taken up in committee.

However, HB 4086 sailed through both the House and Senate in the third week of the session, 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 plant 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.

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.

However, the West Virginia Center for Budget and Policy later released a study showing that the cracker tax break could cost the community where such a facility locates \$300 million in revenues for schools and other local government efforts.

Oh well. The government giveth, and the government taketh away.

Meanwhile, HB 4511, which would establish a WVU Shale Research, Education, Policy and Economic Development Center, is still alive and likely to pass this session.

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

As for other environmental issues this session, our efforts to ban the injection of coal slurry into underground mines and to require the electric utility industry to use “least cost” planning when considering future fuel purchases have both gone down to defeat.

We are continuing to track and lobby a handful of bills this last week. In some cases we are seeking to amend or kill the bad ones. In other cases we are working to see that good bills make it through.

It will be a hectic week.

It's cold and snowy this Monday morning. So please remember that our fine-feathered friends need you to keep your bird feeders full.

Reminder: This will be the last *Legislative Update* newsletter until after the conclusion of the session. We will continue to send out alerts and notices as necessary. Look for our *Legislative Wrap Up* newsletter in early April.

Think Renewable!

Bill Updates . . .

SB 76 – The Green Buildings Act: The bill was amended last week in House Government Organization Committee. The amendment was offered by Del. Eric Householder (R-Berkeley), and would limit the bill to applying to projects that cost \$30 million or more. However, the way the amendment was worded, there is some question as to that limitation. The bill next goes to House Finance.

SB 253 – The DEP Rules Bundle: The rules bundle was passed out of House Judiciary this afternoon on a unanimous voice vote. There was really nothing very controversial in the DEP rules this year. The bill now goes to the House floor for final approval.

HB 4087 – Discontinuing the Timber Severance Tax: The Governor signed this bill last week. It continues to exempt the timber industry from paying severance taxes for the next three years.

SB 552 – WV Land Stewardship Corporation Act: Amended in House Energy, Industry & Labor, Economic Development & Small Business Committee (whew, what a mouthful) to include a representative from labor on the Land Stewardship Corporation board. A previous amendment added a member from WVEC to the board. The bill next goes to House Judiciary.

SB 579 – Increasing the Special Reclamation Tax on Coal: Basically doubles the special rec tax. Bill Raney speaking on behalf of the WV Coal Association called it again “a necessary evil.” The bill passed House Finance today, and now goes to the House floor for final approval.

HB 2740 – Preventing Restrictive Covenants on the use of Solar Energy Systems: The bill passed the House and now sits in Senate Judiciary. Time is running out for Judiciary to deal with the bill.

Energy Efficiency Update

By Cathy Kunkel, Energy Efficient WV

Wednesday was the deadline for bills to make it out of their house of origin and move from the House to the Senate or vice versa. Unfortunately our bills to promote energy efficiency did not make it out of committee, mainly due to power company and coal industry opposition. The “least-cost planning” legislation (SB 162 / HB 4646) failed to make it onto any committee’s agenda; this bill would have required power companies to submit long-term plans to the Public Service Commission showing how they could meet future electricity demand at the lowest cost to their customers. This bill was opposed by the power companies and also the coal industry who wanted all mention of “least cost” removed from the bill; the coal lobby argued that they bill would kill jobs by forcing some coal power plants to be shut down – essentially admitting that their persistent claim that they are the cheapest source of power for West Virginia is bogus.

We were hoping to have our least-cost planning language amended into the bond bill that Appalachian Power was promoting. This bill, which gives the Public Service Commission the

authority to let Appalachian Power float a bond to spread their projected rate increase over ten years, was passed out of the House and is now coming to the Senate floor for a vote. We were hoping that legislators would recognize the need for better long-term planning to avoid the sort of crisis that led to Appalachian Power proposing this bonding mechanism to deal with their \$350 million coal debt, but unfortunately there was not enough support for amending least-cost planning into the bond bill.

Our efforts at the legislature did result in a successful amendment to limit the scope of Appalachian Power's bond bill, however. As originally written, the bill would have allowed any utility to come to the PSC and ask to float a bond to cover their current or projected fuel costs – which we feared would make a habit of pushing expensive fuel costs onto future ratepayers instead of dealing with the underlying problems of poor utility planning. We amended the bill so that it specifically only deals with Appalachian Power's current fuel debt. Our efforts have also led to ongoing conversations with the Public Service Commission and some sympathetic legislators about how to improve long-term utility planning.

Questions Concerning Marcellus Wastewater

By Donald S. Garvin, Jr.

WVEC Legislative Coordinator

Early in the session questions arose as to what regulations for wastewater disposal were included in HB 401 – the Marcellus Shale bill passed by the legislature in December.

After looking at both the Select Committee bill and the final version of HB 401 several times, exactly how flowback water and produced fluids are allowed to be disposed of was omitted in both bills.

That leaves it up to the Governor's Executive Order, the EPA, and DEP's policy.

The Governor's Executive Order makes the following statements:

1. It continues the Memorandum dated July 30, 2010 (the "July 30, 2010 Return Fluids Memorandum") issued by the Office of Oil and Gas **to prohibit land application of any return fluids from drilling or fracking Marcellus wells.**
2. It says that DEP shall take steps necessary **to prohibit the disposal of return fluids from any gas well completed in the Marcellus Shale into any publicly-owned wastewater treatment plant,** unless the DEP has approved in writing the discharge of such return fluids into the publicly-owned wastewater treatment plant or plants in question.
3. It says that DEP shall take steps necessary to increase the regulatory oversight of practices and equipment **to further ensure that no pollutants are disposed of or discharged into waters of this State in violation of any applicable State or federal water quality standards and effluent limitations.**

So where does that leave us?

EPA Region 3 (our region) prohibits water used or produced at oil and gas operations from direct discharge into rivers and streams.

DEP's policy is that it leaves only two options: underground injection, or treatment at an authorized commercial industrial waste water treatment plant. And from what I have been able to find, there are no waste water treatment plants authorized in West Virginia. Also DEP has stated that because of geology here, there are insufficient opportunities for underground injection.

So it appears that there are unresolved issues concerning disposal of both solid wastes and liquid wastes in the recently passed legislation. These issues should be immediately addressed.

The Senseless Waste Must Stop

By Leslee McCarty, WVEC

Due to circumstances beyond our control, like being an election year, and what may best be described as “Marcellus fatigue” at the Legislature, it has been a slow session for many of our issues. So we are hoping to lay some groundwork on things that matter for next year. That includes finding common ground with legislators we may not have worked much with in the past.

Therefore, I found myself prowling the halls last week looking for offices of folks I don't usually lobby, like large numbers of Republicans! Many of them were sponsors of a resolution, HCR 59, <http://tinyurl.com/7sm5xr9> which encourages recycling in the state. It's a pretty great resolution and we of course support it. And it gives us a chance to talk about things we have in common, and gave me a chance to encourage them to support recycling at the Capitol!

I have been fretting all year about the use of Styrofoam packaging at the Capitol cafeteria, so I have worked my way through a maze of state bureaucracy to see who can put a stop to using Styrofoam not only at the food court, but also in offices. I have to report that so far, the signs point to Legislation or to the Governor acting by executive order.

Then there are all those plastic clamshells which could be recycled, but are being trashed. There is a lot of unnecessary garbage being created at the Capitol Cafeteria, and large groups of students come through there on a daily basis. So what are we teaching them?! Do as I say, not as I do?!

Anyway, it turns out I may have several allies on both sides of the aisle as I try to stop the crazy throwaway mentality in action at the highest levels of government in our state. And I'm ready to do just about anything to stop the madness. Maybe a giant sculpture on the lawn made out of the trash from the cafeteria? Ideas are welcome - the senseless waste must stop!

Active Bills We Are Tracking (3/05/12)

Bill Number	Title	Committee
Senate Bills		
SB 76	Green Buildings Act (<i>GREAT Bill</i>) (Amendment in House Gov Org)	House Finance
SB 202	Permitting Div. of Forestry to enter into stewardship contracts with Forest Service	House 1 st Reading
SB 387	Requiring training of floodplain managers	House 2 nd Reading
SB 496	Modifying DEP requirement of greenhouse gas emissions inventory	House Judiciary
SB 497	Awarding attorney fees and costs in mining permit appeals (<i>DEP Bill</i>)	House Finance
SB 552	Creating WV Land Stewardship Corporation Act (<i>Devil in the Details</i>)	Passed EIL – to Judiciary
SB 562	Regarding DEP narrative water quality standard	House Judiciary
SB 579	Increasing special reclamation tax on clean coal mined (<i>Good Bill</i>)	Passed House Fin – 1 st Reading
SB 615	Conforming WV Water Pollution Control Act with federal Clean Water Act (<i>Bad Bill</i>)	House Judiciary
SB 624	Permitting transfer of alternative-fuel motor vehicles tax credit	House Finance
House Bills		
HB 2740	Preventing covenants restricting the use of solar energy systems (<i>WVEC Bill</i>)	Senate Judiciary
HB 4049	Requiring DEP to maintain an Office of Internal Auditing	Senate Gov Org
HB 4086	Governor's ethane "cracker" plant tax credit bill	Signed by Governor
HB 4087	Continuing the discontinuance of timber severance tax	Signed by Governor
HB 4261	Streamlining legislative rule-making review process (<i>Devil in the Details</i>)	Senate Judiciary
HB 4511	Creating WVU Shale Research Center	Senate Finance
HB 4530	Authorizing PSC issue consumer rate relief bonds (Amended in Senate Judiciary)	Senate 2 nd Reading
HB 4547	Creating the West Virginia Innovation Free-Trade Act	Senate Econ Dev

(NOTE: SB 253, the Senate DEP rules bundle passed House Judiciary, and is now on 1st Reading).

Calendar of Events

March 10: Legislative Session ends

March 24: WVEC Board of Directors meeting. Time and location TBA

April 13: WV Citizen Action Fundraiser. Woman's Club of Charleston. Save the date!

May 19: Celebrate Huntington Sustainability Fair, Heritage Station - Huntington, WV. Activities include presentations, local foods, artisans, alternative transportation, music, small businesses, & more. Complete list of events and sponsors will be forthcoming soon and plans continue to develop. For more information or to participate: deniseap@earthlink.net

October: WVEC Fall Conference. Stay tuned for exact details

November 3: Bizarre Bazaar. Pink Moon Coffee House - Weston, WV. Featuring 20 one of a kind booths – Handmade arts; healing arts, gourmet foods.

March 13, 2013: E-Day at the Capitol. Entire Upper & Lower Rotunda – Senate & House halls.

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

(For bill tracking, bulletin board (journals), legislators' e-mails.)

To Call Toll Free: 1-877-565-3447 or local Charleston area: (304) 347-4836

Listen Live: West Virginia Legislature page <http://www.legis.state.wv.us/> and click on "listen live."

WV Environmental Council Web-site: www.wvecouncil.org

WVEC Office: (304) 414-0143

Ohio Valley Environmental Coalition:

www.ohvec.org/ovec_news.html and www.ohvec.org/news_gen.html daily.

Every morning, OVEC checks scores of news sources and posts links.

Legislative Update is published by the West Virginia Environmental Council (WVEC) – a statewide organization dedicated to facilitating communication and cooperation among citizens in promoting environmental protection in West Virginia. *Legislative Update* is published weekly during the regular Legislative Session.

We welcome letters, articles, and artwork from readers and reserve the right to edit or reject submissions. Please send materials to Denise Poole, *editor* at deniseap@earthlink.net

Support the West Virginia Environmental Council

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