



*West Virginia Environmental Council's*

# **GREEN Legislative Update**

*Published Weekly during West Virginia's Legislative Session*

Volume: **23** Number: **2**

Date: **February 22, 2013**

## **Under the Dome**

*By Donald S. Garvin, Jr.  
WVEC Lobbyist*

### **Week 2 – Rules, Rules, Rules**

All of the DEP “rules” were introduced in the Senate this week.

So it's time for my annual legislative tutorial about “rules.” Here we go.

The Legislature passes laws (or statutes), and then they pass rules (or regulations).

Generally speaking, the laws or statutes set out the broad guidelines for government actions, and the rules set out the specific details or regulations. Generally speaking, the laws establish the authority for the government to act and create an agency to implement the action. Generally speaking, the agency then develops (or “promulgates”) the individual rules needed to enforce the laws.

Agency rules are not proposed by individual legislators. They are developed annually by the specific agency and are then presented to the Legislative Rule-Making Review Committee during the Interim sessions.

Usually, the Legislative Rule-Making Review Committee then simply approves the rules and passes them on for consideration by the full Legislature during the regular session.

There are normally more than a hundred of these rules. If you look at the legislative web site, you will see a long list of bills introduced in both the House and the Senate with titles like, “Authorizing Commissioner of Agriculture promulgate legislative rule relating to shellfish” (that was an actual rule title a couple of years ago).

But you can't find out what's in these rules on the legislative web site. Each agency files its rules with the Secretary of State's office, and that's where you have to go to read them (but only if you

know the correct section of the state's legal codes to look under). However, more recently you can also find them on the specific agency web site.

To make matters worse, when these agency rules are introduced they are assigned both a House bill number and a Senate bill number, and these are different than the numbers used by the Rule-Making Review Committee.

And then they are assigned to committees in both houses. And this year they will likely be run first in committees on the Senate side. They will then be "bundled" and sent as a group – ***under a new bill number*** – to the House. It really is quite confusing!

But that's not all.

West Virginia is one of the few states that allow the Legislature to actually "promulgate" agency rules. Most states, and even the U.S. Congress, can only vote a rule up or down. They cannot change or re-write the rule.

However, in West Virginia lawmakers can change any part of a proposed agency rule. In the extreme, they can even do a "strike and insert" and replace the entire rule with one more friendly to industry.

It is the ultimate politicization of the rule-making process. It's not a particularly citizen-friendly arrangement. And industry always gets the last bite at the apple.

What happened two years ago is a good example: under pressure from industry, the Legislature gutted DEP's proposed Water Quality Standards Rule (47CSR2).

The result was that several water quality standards that DEP knew were important to protect human health and the environment was simply removed from the rule.

So what agency rules are we concerned about this year?

Our primary concern this year is [35CSR8](#) (SB 245). This is a new DEP rule that implements the Horizontal Well Control Act (think Marcellus shale drilling) passed by the Legislature in a December, 2011, special session. Generally speaking, we think this is a good rule. The final rule proposed by DEP adopted several of the comments submitted by concerned citizens (such as us) and rejected many of the comments from industry. But the rule goes only as far as the Horizontal Well Control Act allows. And we are concerned that industry will attempt to weaken the rule as it progresses through the committee process. In the Senate the rule will first be considered by the Energy, Industry and Mining Committee, and will then be taken up by the Judiciary Committee.

Equally important is [47CSR30](#) (SB 249), DEP's proposed WV/NPDES Rule for Coal Mining Facilities. The rule would implement the provisions of SB 615, which was passed by the Legislature last year. The bill had the dubious title of "Conforming WV Water Pollution Control Act with federal Clean Water Act." The bill (and the rule) would remove from state law a measure requiring coal mine facilities to meet not only their specifically permitted effluent discharge limitations but all of the state's water quality standards. The federal EPA has not yet approved SB 615, and has questioned the legality of the bill under the Clean Water Act. We continue to oppose both the legislation and this rule.

We are also watching [33CSR12](#) (SB 246), the DEP rule implementing the ban on disposing of “certain electronic devices” such as televisions and computers in landfills; [87CSR4](#) (SB 251), a Fire Commission rule updating the energy code within the state building code to the 2009 International Energy Code standards; and [61CSR28](#) (SB 261), an Agriculture rule relating to poultry litter and manure movement into primary poultry breeder rearing areas.

So, that’s the legislative “rules” tutorial for this year.

Remember to keep your bird feeders full this week. It’s the “rule.”

## **Cooper’s Rock Bill Introduced: SB 196**

This week Senator Robert Beach (D-Monongalia) introduced SB 196, a bill to amend and reenact 19-1A-3 of the Code of West Virginia. This bill would transfer the supervisory and jurisdictional responsibilities of the area of Coopers Rock State Forest (located south of Interstate 68) and the area located north of Interstate 68 – the trout pond – FROM the Division of Forestry TO the Division of Natural Resources.

The bill gives the designated areas of Coopers Rock State Forest the same status as Kanawha State Forest, except that the sale of timber would be permitted under the jurisdiction and control of the Director of the Division of Natural Resources in those designated areas.

We’ll keep you posted on this one!

## **DEP Reports to the Legislature: ‘Studies Not Completed’**

*By Denise Poole  
WVEC Lobby Team*

On Thursday, DEP presented what turned out to be justification for not completing two studies that were due to the legislature by the first of the year. The study of VOC’s (Volatile Organic Compounds) /air/noise/dust – as they relate to the proximity of well pads to peoples’ homes; and second, the study of the safety of pits and impoundments.

Secretary of DEP Randy Huffman, Oil & Gas Director James Martin, Chief of Engineer / Air Toxic Coordinator Renu Chakrabarty, Homeland Security / Emergency Response Group & Air Toxics Coordinator Mike Dorsey, and Paul Ziemkiewicz, Ph.D, Director WV Water Research Institute, WVU each reported the status on the data collected and studied to date. They estimated the report would be finished and printed in “hopefully two weeks.”

HB 401 mandated in the 2011 Special Session the report be completed by the first of this year so legislators could review and amend the bill for regulating horizontal drilling and hydraulic fracturing for natural gas in this 2013 regular session. A third report is due in July, 2013 regarding air pollution at well sites.

With specific questions from Delegates Barbara Fleischauer (D-Monongalia), Clif Moore (D-McDowell), Woody Ireland (R-Ritchie), Tim Manchin (D-Marion) and Mike Manypenny (D-Taylor), DEP responded as to why the report is delayed, and what studies have been done.

Delays were attributed in part to contracts, field work, trainings, need for consistency with standards, need for adequate time for accuracy, permission to go onto private land, and difficulty of the work. However, both Randy Huffman and Dr. Ziemkiewicz stated that the report would be thorough and “powerful” when completed.

Concerns by the delegates included older wells being grandfathered in prior to the adoption of HB 401, best management practices for VOC’s, water usage, waste water contaminants, radiation levels and noise pollution results. Delegate Fleischauer emphasized urgency to complete the findings, especially as residents are concerned about their health.

### ***Ill Winds Blowing . . .***

Every year the WVEC lobby team is forced to spend countless hours tracking and fending off bad legislation as best we can. This year apparently will be no different. It’s only the second week of the session and numerous bad bills are coming at us from all fronts.

Here’s a short list.

Coal Industry Bills:

- HB 2571, which would further weaken the conflict-of-interest provisions for members of the state Environmental Quality Board.
- HB 2579, which would delay efforts to force the coal industry to clean up its selenium pollution.

The Governor’s Bills:

- SB 187 (same as HB 2507), which would allow the Governor, or the Speaker of the House, or the Senate President to require a “Jobs Impact Statement” on any proposed legislation.
- SB 342 (same as HB 2590), which would create a “WV Land Stewardship Corporation” that could by-pass current brownfields law.
- SB 185 (same as HB 2506), which would remove electric and hybrid-electric vehicles from eligibility for the alternatively fueled vehicle tax credit.

Others:

- SB 56 (same as HB 2214), creating the Intrastate Coal and Use Act, which would eliminate federal oversight of coal mined and burned within the state.
- SB 98, creating the Shale Research, Education, Policy and Economic Development Center at WVU.

### ***And Some Not-so-Ill Winds . . .***

Here are a couple of bills that deserve to see the light of day:

- SB 158 (same as HB 2494), creating the “Complete Streets Act”.
- SB 167, creating the “West Virginia Future Fund”.

We’ll have more information about most of these bills in future issues of the *Legislative Update*.

## **WVEC's Legislative Kick-Off Was a Blast!**

Heartfelt thanks to everyone who came out Tuesday night for our annual "Kick-Off Blast" at Little India Restaurant.

Once again, we had a great time and appreciate the support, bonding opportunities and all the amazing work by so many during these legislative sessions.

Special thanks to Little India Restaurant, The VooDoo Katz, WV Citizen Action Group, WV Highlands Conservancy, our legislators and lobbyists working so diligently for West Virginians' rights in so many important categories.

See you "under the dome" and hopefully on E-Day at the Capitol and our E-Day Benefit & Awards Dinner (Woman's Club of Charleston) on Thursday, March 14<sup>th</sup>!

### **WVEC's Annual E-Day! At the Capitol**

**Thursday, March 14<sup>th</sup> ~ 9 am till 3:00 pm  
Senate & House Halls / Upper Rotunda**

**Displays / Citizen Lobbying**

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

**Woman's Club of Charleston (corner of Elizabeth Street / Virginia Ave.)  
6 pm till 9 pm**

**Dinner Buffet: Lasagna, Soup, Salad, Bread, Desserts & Drinks.  
Cash donation bar.**

**Awards bestowed to:**

**Don Gasper ~ *Mother Jones***

**Ben Stout ~ *Don Gasper Science In The Public Interest (new)***

**John Manchester ~ *Chuck Chambers Public Service***

**Bill Hughes, Wetzel Council Action Group ~ *Laura Forman Grassroots Activist***

**Music provided by pianist Robin Godfrey**

**Donation of \$20 each at the door**





## Calendar of Events



**February 23:** Energy Efficiency Workshop – with noted filmmaker & environmentalist Jeff Barrie. Charleston WV. Workshop starts at 1116 Smith Street, and concludes at 301 Piedmont Road (the ReStore). From 9:30 am – 3:30 pm. Activities include: ‘ Kilowatt Ours’ screening (Jeff Barrie), Green Your Home, Lunch with Soul Dip Dinner, Energy Efficiency Meets a Creative Space, Harnessing the Power of the Re-Store. Sponsored by, Energy Efficiency in the East End.

For more information: Stacy Gloss, [stacygloss@gmail.com](mailto:stacygloss@gmail.com)

**February 23:** 2013 Appalachian Folk and Heritage Conference. John P. Stephens Cultural Arts Center, Raceland-Worthington High School, Raceland Kentucky. From 10 AM – 6 PM. Films include, “Banjo Player from Bull Creek” and “Hazel Dickens: It’s Hard to Tell the Singer from the Song”. Panel on “Forging Our Future: 21<sup>st</sup> Century Appalachia”. Speakers include: Ernie Tucker – “Take a Feather from a Groundhog”; Soc Clay – “The Mad Trappers View”; Christie Cook – “Oral Storytelling, the Heart of Appalachian culture. For more information: [www.http://appalachianconference.weebly.com](http://appalachianconference.weebly.com)

**February 27:** “Power Hour” with Energy Efficient WV. Morgantown Library, Spruce Street – Room A. From 6 PM – 9 PM. Why is your power bill going UP? Say NO to pricey old power plants, and YES to efficiency. Discussion on two bills in the WV legislature this session regarding energy efficiency. Learn how you can help support these pieces of legislation. Chris Shepherd from Energy Efficient West Virginia ([www.eewv.org](http://www.eewv.org)) will be giving the presentation. Light refreshments provided.

**February 27:** Celebration of the life and work of Bob Gates. The Empty Glass – 410 Elizabeth Street, Charleston. From 5:30 – 8:00 PM. Friends of Bob Gates are invited to attend. A few of Bob’s films will be shown.

**March 14:** WVEC Annual E-Day at the Capitol. From 9 AM till 3 PM. Senate & House Halls & Upper Rotunda. Environmental Groups, Sustainable Businesses, Local Artists, Citizen Lobbying.

For more information: [www.wvecouncil.org](http://www.wvecouncil.org) or contact Kevin, [a\\_clean\\_wv@yahoo.com](mailto:a_clean_wv@yahoo.com)

**March 14:** WVEC Annual E-Day Benefit Dinner & Awards Ceremony. The Women’s Club of Charleston (corner of Elizabeth St. and Virginia Ave.). From 6 PM – 9 PM. Enjoy our dinner buffet, cash donation bar, silent auction, live music and award presentations (to be announced). Join us and relax after E-Day at the Capitol. Suggested donation of \$20 per person at the door. For more information: [www.wvecouncil.org](http://www.wvecouncil.org) or contact Kevin, [a\\_clean\\_wv@yahoo.com](mailto:a_clean_wv@yahoo.com)

**April 16-18:** Good Jobs Green Jobs Conference. The Hilton Hotel, Washington, D.C. Theme: Let’s Get to Work: Climate Change, Infrastructure and Innovation. Cost: \$225 Full Conf., \$125 for 1 Day, \$50 for Wed. evening networking reception, and \$50 for a Plenary Pass – to all 4 sessions.

For more information & to register: [www.greenjobsconference.org](http://www.greenjobsconference.org)

## Legislative Session 2013 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:

<http://ohvec.org/news.php>

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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