



West Virginia Environmental Council's

GREEN Legislative Update

Published Weekly during West Virginia's Legislative Session

Volume: 24 Number: 3

Date: **January 27, 2014**

Under the Dome

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

Week 3 – The Legislature and the “Water Crisis”

The 2014 session of the WV Legislature convened here in Charleston on Wednesday, January 8.

On Thursday, January 9, a chemical spill into the Elk River resulted in the declaration of a state of emergency in nine counties, including Kanawha County, the home of state government. There was no water to drink. There was no water to cook with, wash or bathe with. So the Legislature basically shut down for about five days.

Well, the legislators returned the next week and basically resumed normal business on Tuesday, January 14.

On Wednesday, January 15, SB 355 was introduced in the Senate. This bill is the result of recommendations made by the Joint Legislative Oversight Commission on State Water Resources, which is normally an “interim” committee. SB 355 amends the Water Resources Protection and Management Act and adopts the State Water Resources Management Plan. It is a water “quantity” bill.

On Thursday, January 16, SB 373 was introduced. The base of this bill is SB 355, which had been introduced a day earlier. SB 373 adds a new section to SB 355 requiring registration of existing aboveground storage tanks and directing the secretary of the Department Of Environmental Protection to develop a program to regulate new and existing aboveground storage tanks (the chemical spill that occurred a week earlier was the result of a leaking aboveground storage tank). The bill’s lead sponsors are the Senate majority leader, Senator John Unger (D-Berkeley) and Senate President, Senator Jeff Kessler (D-Marshall).

So SB 373 was the first bill out of the hopper to deal directly with the Elk River chemical spill.

On Friday, January 17, the Joint Legislative Oversight Commission on State Water Resources met and began its “investigation” into the chemical spill. The Commission co-chairman, Senator Unger, said that the Commission would meet throughout the regular session. And, in fact, those meetings have continued.

On Monday, January 20, Gov. Earl Ray Tomblin held a press conference to announce his proposed legislation to implement an above ground storage tank regulation program. On Wednesday, January 22, the governor’s bill was introduced in both the House and Senate, HB 4258 and SB 417 respectively. Frankly, the governor’s bill contains so many exemptions that it is difficult to find a storage tank that it would cover.

In the Senate, SB 373 has been “fast tracked”. On Wednesday, January 22, the Senate Natural Resources Committee met and passed a “committee substitute” for the bill, that includes many of the exemptions from the governor’s bill. Then the very next day, the Senate Judiciary Committee took up the bill, unanimously passing a “committee substitute” of the Natural Resources Committee “committee substitute”. That version of the bill was read the first time on the Senate floor on Friday, and is on second reading – the amendment stage – today, January 27.

Now, what about the House?

Well, the first bill to pass the House relating to the water crisis was HB 4175, to provide aid to small businesses affected by the water emergency. However, *Charleston Gazette* reporter and columnist Phil Kabler points out the bill “is pretty much just for show,” because “it basically gives the governor authority to do things he could already do to assist businesses during states of emergency.”

HB 4255, which is the same as SB 355 was introduced on January 22, and is on the agenda for House Judiciary Committee this afternoon. There are several other House bills relating to all this (see the list on Page).

Meanwhile, the WVEC lobby team and our allies are working with several legislators in an attempt to improve whatever legislation is finally adopted.

Winter just keeps hitting us with blast after blast, so please keep your birdfeeders full for our fine-feathered friends.

Think Renewable

What About the Water Quality Rule?

The Water Quality Standards rule, [47CSR2](#) (SB 136), was placed at the end of the agenda in Senate Natural Resources Committee last Wednesday, and was passed out with almost no discussion. Because it came so late in the meeting, we were not able to address the committee about our opposition to the rule.

This rule change, proposed by the WV Department of Environmental Protection's Division of Water and Waste Management, requires the calculation of aluminum criteria based on the "hardness" of the stream. The new rule would significantly weaken current protections, as compared to the existing rule. The revisions are drastic and equate to greater than a 13-fold and 46-fold increase over the current criteria for acute and chronic aluminum toxicity to aquatic life respectively.

The only justification given by DEP for this rule change is that the costs of water treatment under the current rule are too burdensome for the coal industry. The proposed rule fails to protect the aquatic life designated use in West Virginia's rivers and streams, an invaluable resource to the State. And it fails to protect the public's interest, rather than the interests of a small number of polluters.

The rule will next be considered by the Senate Judiciary Committee, probably sometime this week. So it's time to contact your Senators and ask them to oppose the new aluminum standard as proposed in this rule.

To reach members of the Senate Judiciary Committee:

<http://www.legis.state.wv.us/committees/senate/SenateCommittee.cfm?Chart=jud>

What Exactly Should I Ask of My Legislators, in Order to Ensure Clean Water?

By Vickie Wolfe
WVEC Lobbyist

Everyone's telling you to be mad as hell, don't take it any more, it's up to "us" to do something, hold your leaders accountable, etc. But for what, exactly, should you be advocating?

The WVEC and our allies are asking the legislature to implement two sets of recommendations, and we'd love your help in advocating for them.

After the 2008 Bayer CropScience explosion, the U. S. Chemical Safety Board (CSB) released a rather lengthy report that contained a number of recommendations. Here are a few of those recommendations:

- The Director of the Kanawha-Charleston Health Department should “establish a Hazardous Chemical Release Prevention Program to enhance the prevention of accidental releases of highly hazardous chemicals, and optimize responses in the event of their occurrence.”
- Among other things, this program should define the characteristics of chemical facilities that would be covered.
- These covered facilities should develop, implement, and submit for review and approval: a) information on hazards and processes; b) written safety plans; c) emergency response plans, and d) performance indicators addressing the prevention of chemical incidents.
- The program should have right-of-entry to covered facilities, and access to requisite information.
- A system of fees on covered facilities should be established, to cover oversight and related services.
- Public participation should be provided for.

To see the full list of recommendations, as well as those for other agencies, go to p. 116 of the CSB’s report: http://www.csb.gov/assets/1/19/Bayer_Report_Final.pdf

Then on Monday, January 20, the West Virginia Rivers Coalition (WVRC) released a report on the water crisis, co-authored by the WVRC and the Morgantown consulting firm Downstream Strategies. That report also contained a number of recommendations, such as:

- The WV DEP should be held “accountable for fully and consistently enforcing its permits and all environmental laws.”
- The WV DEP should be required to inspect all sites holding NPDES permits, and the most critical sites should be inspected immediately.
- Facilities located in “zones of critical concern” upstream from public water supply intakes should be prohibited from coverage under general multi-sector industrial stormwater permits (such as that held by Freedom Industries)
- Funding should be increased for the WV DEP’s NPDES and environmental enforcement programs.
- The WV Bureau for Public Health should update Source Water Assessment Reports across the state.
- The governor and legislature should mandate the development of Source Water Protection Plans and should provide for funding.

To see the full list of recommendations, you can access the report here: http://www.downstreamstrategies.com/documents/reports_publication/freedom-spill-report_1-20-14.pdf

Finally, MCHM was one of about 62,000 chemicals “grandfathered” in when the Toxic Substances Control Act (TSCA) was passed in 1976, therefore no testing was required and little was known about it. Remind Senator Rockefeller, Senator Manchin and your Representative that reform of the TSCA is badly needed. More information is available here: <http://www.edf.org/health/policy/chemicals-policy-reform>

Water Related Bill Tracking

SB 136 Water Quality Standards Rule. Weakens aluminum criteria for all state waters. Pending, Senate Judiciary, 01/22/14.

SB 355 Amending Water Resources Protection and Management Act. Pending, Senate Natural Resources Committee, 01/15/14.

SB 373 Adds a new section to SB 355 regulating aboveground storage tanks. This is the “active” bill in the Senate. On second reading, 01/27/14.

SB 417 Creating Source Water Protection Act. This is the Governor’s bill. Pending, Senate Natural Resources Committee, 01/22/14.

HB 4255 Water Resources Protection and Management Act. Pending, House Judiciary Committee, 01/22/14. This is the same as SB 355 and is on the agenda for House Judiciary on Monday 01/27/14 at 2:15.

HB 4258 Creating a source water protection program and an industrial aboveground storage tank program to protect source water supplies and systems. Pending, House Judiciary Committee, 01/22/14. This is the Governor's bill.

HB 4285 Amending the Water Resources Protection and Management Act to incorporate recommendations from the state Water Resources Management Plan. Pending, House Judiciary Committee, 01/24/14. This is the same as the original version of SB 373.

HB 4277 Requiring only registration and inventory of existing aboveground storage tanks. Pending, House Judiciary Committee, 01/23/14. This is a bill sponsored by House Republicans.



Can we hold our leaders accountable?

By Vickie Wolfe
WVEC Lobbyist

When I hear people suggest that the water crisis is partly our own fault because we haven't held our leaders accountable, I have mixed feelings.

On the one hand, I do wish people would be more "plugged in," would follow how their representatives vote on various issues and then express their pleasure or displeasure at the ballot box.

However, I don't know about you, but more often than not when I go to vote I feel like I'm choosing between the lesser of two evils. If I vote against someone who isn't representing my interests, will his/her opponent be any better? If the incumbent is more concerned about the interests of campaign funders than about my interests, won't the same be true of the challenger?

And that is not to say they're *all* worried about contributions to their own campaign chests drying up; think Senator Rockefeller. But most of them do need to worry about some big spender deciding to fund the campaign of an *opponent*. Think back ten years to Brent Benjamin vs. Warren McGraw.

Public funding of political campaigns would be a big help. For quite a few years, our friends at CAG and OVEC worked very hard to get such a "clean elections" bill through the legislature. They've had good success regarding Supreme Court elections, but that's it so far.

And as for those of us who pound the marble halls on behalf of everyday people and the environment (WVEC, Citizen Action Group, WV Free, etc.), I don't know what else we can do to persuade these folks to look out for their constituents rather than for the moneyed interests. A couple of years ago someone suggested that it would be more effective to just close our doors, sell all our assets, and use the proceeds to try to buy some influence.

Remember the movie *Sicko*, wherein Michael Moore told us that in France, politicians are afraid of the populace? Here, it seems to be the other way around. Why is that?? Our tax dollars pay their salaries!

I don't know what else to say except that our system is as corrupt as any third world country, and that makes me depressed.



(Note To Our Readers: Because of all the activity last week, this issue of the Legislative Update was destined to be late. Then, over the weekend our fearless editor, Denise Poole, got marooned in snow and ice somewhere in the heart of Lewis County, while returning from a trip to Baltimore. In her absence, we have pieced together this abbreviated version of the Update. We will attempt to get back to normal this week. Please stay warm and safe, Denise.)



WVEC's E-Day at the Capitol

**Monday, February 17, 2014
Senate Side Hallway & Upper Rotunda
State Capitol, Charleston
9:00 a.m. – 3:00 p.m.**

Displays, Citizen Lobbying, Press Conference

(If your group would like to participate, please contact Karen Yarnell:

Karen.yarnell@fairmontstate.edu)

E-Day Benefit Dinner & Awards Ceremony

**Woman's Club of Charleston, corner of Elizabeth St. / Virginia Ave.
6:00 p.m. – 9:00 p.m.**

Donation of \$15 per person





Calendar of Events



January 27: Advocacy Training – Huntington. Memorial Student Center, Marshall University – One John Marshall Drive. 6:00 p.m. – 8:00 p.m. Understand the legislative process. Get tips on speaking with elected officials. Learn about progressive organizations and issues in West Virginia.

(These trainings are free, and everyone welcome to attend. Food & beverages served. Sponsored by: American Civil Liberties Union (ACLU) WV; WV Citizen Action Group (CAG); Direct Action Welfare Group (DAWG); Fairness WV; Healthy Kids & Families Coalition; National Association of Social Workers (NASW) WV; Planned Parenthood; WV Coalition Against Domestic Violence; WV Environmental Council (WVEC) and WV FREE.)
For more information: NASW, mail@naswww.org or 304 345-6279

February 6: PUBLIC HEARING – Water Quality Standards variance. Begins at 6 p.m. in the **Coopers Rock Conference Room at the WVDEP Headquarters** located at 601 57th St., SE, Charleston, WV. The West Virginia Department of Environmental Protection (WVDEP) will hold a public hearing to receive comments on an application for a variance from water quality standards for dissolved aluminum and pH for an unnamed tributary of Slab Fork and Slab Fork River, a tributary of the Guyandotte River near Maben in Wyoming County, West Virginia. The variance request was submitted by Carbon Resources Development, Inc. Any person wishing to comment on the proposed variance is invited to be present or represented at the hearing. In addition to oral comments provided at the hearing, the agency will accept written comments at any time up to the conclusion of the public hearing. No comments will be accepted after that time. Written comments may be submitted to the following address:

Kevin Coyne

Water Quality Standards Program

WV Department of Environmental Protection

601 57th St., SE

Charleston, WV 25304

Comments may also be e-mailed to dep.comments@wv.gov Copies of all written information pertinent to the proposed variance, including the variance application and the WVDEP's information sheet summarizing the proposed variance may be reviewed by contacting the WVDEP office at 601 57th St., SE, Charleston, WV 25304. Telephone: 304-926-0499 extension 1110; Fax: 304- 926-0496. E-mail: Kevin.R.Coyne@wv.gov Information is [also available here.](#)

February 17: WV Environmental Council's Annual "E-Day at the Capitol". WV State Capitol - Senate hallway, Upper Rotunda & alcoves. From 10:00 a.m. – 3:00 p.m. Environmental Groups / Organizations / Projects, Sustainable Businesses, Citizen Lobbying.

For group display registration: Karen.yarnell@fairmontstate.edu

February 17: WV Environmental Council's Annual "E-Day Benefit Dinner & Awards Ceremony". Woman's Club of Charleston. 6:00 p.m. – 9:00 p.m. Full course dinner, cash donation bar. Donation of \$15 per person, or \$25 per couple.

For more information: deniseap@earthlink.net

February 24: WVU Law National Energy Conference 2014. Erickson Alumni Center, WVU. This is a free, one-day conference. Features speakers from air and energy regulatory agencies, electric utilities, energy producers, academic institutions, environmental groups, and public

policy organizations to explore legal, policy, economic, and other issues surrounding the new rules, including:

EPA's rule-making process and the likely framework of the EPA rules.

Options available to states for complying with the EPA rules.

Options available to utilities and other energy producers for complying with the EPA rules.

Socio-economic implications for coal dependent states.

Flexibility and the Path Forward for Coal Dependent States

Coal fired power plants supply approximately 40 percent of the electricity generated in the United States, but also contribute 80 percent of the power sector's carbon dioxide (CO₂) emissions.

In June 2013 President Obama directed EPA to complete CO₂ emission standards for new and existing power plants by June 1, 2015. In September, 2013 EPA proposed standards for new power plants under Section 111(b) of the Clean Air Act. In June 2014, EPA is expected to propose standards and guidelines for existing power plants under Section 111(d) of the Clean Air Act, which will become effective one year later, in June 2015.

Major coal producing regions of the country and states served by electric utilities relying heavily on coal fired generation potentially will bear disproportionate adverse impacts from the EPA's regulation of CO₂ emissions. At the same time, EPA's rules are expected to provide a number of compliance options for states in achieving the CO₂ emission standards. This conference will examine pending EPA regulation under section 111(d) of the Clean Air Act and explore the policy frameworks available to states for developing CO₂ emission reduction strategies for existing power plants.

Panelists will discuss compliance options likely to be made available to states, potential impacts on the power sector as well as the broader economic implications of the EPA regulations for coal-producing regions.

U.S. Senator **Joe Manchin** (D-W.Va.) has been invited to give the keynote address.

The luncheon speaker will be **Charles Patton**, President and Chief Operating Officer of Appalachian Power.

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Feb 27 - March 1: Dimensions of Political Ecology Conference. To be held at the University of Kentucky, Lexington.

For more information: www.politicalecology.org

March 9 – 16: Mountain Justice Spring Break. North central West Virginia - focused on coal and fracking issues, beautiful location, camping and indoor lodging, all food and programs provided for low cost alternative spring break.

For more information: www.mjsb.org

March 22: WVEC Board of Directors meeting. TBA

June: WVEC Board of Directors June Retreat. TBA

June 21 & 22: 9th Annual Lavender Fair. To be held at the beautiful LaPaix Herb Farm, Alum Bridge WV. Theme: "Choose Love". Tracks: 1) Honoring the Earth. 2) We Are All Connected. 3) Just Herbs. This is a very popular event, so please register early to ensure attendance. Car pooling is encouraged.

Reservations are limited to 100 per day. Cost: \$50 per day per person.

For more information: www.lapaixherbfarm.com

Fall 2014: 25th Annual WVEC Fall Conference! Join us as we celebrate **25 years** of protecting West Virginia's environment and being your voice at the WV state capitol! Exact location and plans TBA. Stay tuned!

► To have your event posted, please contact Denise Poole: deniseap@earthlink.net

Legislative Session 2014 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: <http://ohvec.org/news.php>

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

WV Citizen Action Group: <http://www.wvcag.org>

WV –CAG Office: (304) 346-5891

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



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WVEC Legislative Update Newsletter

January 27, 2014