



West Virginia Environmental Council's

GREEN Legislative Update

Published Weekly during West Virginia's Legislative Session

Volume: 24 Number: 8

Date: February 28, 2014

Reminder: This is the last weekly "Green Legislative Update" newsletter until post-session. We will issue our "Green Legislative Wrap-Up" newsletter at the conclusion of the 2014 regular session. There is so much happening on critical bills this coming (last) week, so we will **continue** to send out updates, notices, action alerts and posts on our Facebook group page and e-mail list. Please stay tuned!

Under the Dome

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

Week 8 – Unfinished Business

As the Legislature sprints into the final week of the 2014 regular session, there is a lot of very important unfinished business out there.

The House Judiciary Committee has just begun to mark up an 80-page working draft of a new version of SB 373, also known as "the water bill" or the Aboveground Storage Tank Act.

The committee had its first look at this new draft Thursday afternoon. They will work the bill again this afternoon, and the plan is to come back Sunday afternoon to further work the bill. Ostensibly, the goal is to pass a bill Sunday evening.

But everyone is not happy in Judiciary Committee land. Some delegates are upset that they have not had enough input into the bill. Others are upset that there is not enough time left to consider the bill. And Del. Meshea Poore (D-Kanawha) sent Gov. Earl Ray Tomblin asking him to call a special session to focus solely on the water bill. The letter

was signed by a bipartisan group of 26 other delegates, including Minority Leader Tim Armstead (R-Kanawha).

A special session?? Please say it is not so!

Frankly, folks, there are a lot of good things included in this Judiciary draft bill. Is it perfect? No. But the provisions already included would provide significant new regulation for protecting water supplies across the state.

Now is not the time to start over. Now is the time for the House to pass their version of SB 373, and send it back to the Senate for its consideration.

Let's get it done.

Seems like there is not much of a reprieve from winter's blast. So please keep your birdfeeders full for our fine-feathered friends.

Weekly Statehouse Aquapocalypse Update

By Vickie Wolfe, WVEC Lobbyist

On Monday, Governor Tomblin's office issued a press release titled, "Governor Tomblin Meets with EPA Administrator to Provide Update on Elk River Chemical Spill." But the Governor also hand delivered to Administrator McCarthy a letter providing recommendations for establishing carbon dioxide emission guidelines for existing power plants; one wonders which was the real reason for the meeting. You can read the Governor's letter here <http://www.governor.wv.gov/Documents/McCarthy%20Letter.pdf>; and to read the WV DEP's recommendations for establishing CO₂ emission guidelines for existing power plants, go here: <http://www.governor.wv.gov/Documents/WVDEP%20Principles%20for%20Existing%20EGU%20CO2%20Regulation.pdf>

Also on Monday, the West Virginia Rivers Coalition and Downstream Strategies released a new report on potential sources of contamination of the Elk River above Charleston's West Virginia American Water treatment plant intake. In the words of the press release, the report "provides a preliminary assessment of sites that, if improperly managed, could contaminate West Virginia American Water's Charleston drinking water intake . . . In response to a Freedom of Information Act request, the West Virginia Bureau for Public Health provided a list of 62 potential significant contaminant sources that could quickly impact the Charleston drinking water intake. The new report outlines the character of these sites," as well as whether and how they are regulated.

On Wednesday morning, Evan Hansen of Downstream Strategies gave a presentation on the new report to the House Judiciary Committee, where S.B. 373 now sits. Evan

also answered many questions asked by committee members. We are thrilled that the Judiciary Committee and other House members are wisely giving so much well-deserved credence to Evan's expertise!

Since Wednesday was the deadline for passage of bills by their house of origin, legislators have been spending a great deal of time in floor sessions while House Judiciary legal staff has worked to fine-tune S.B. 373. Finally on Thursday afternoon, the Committee's draft was released and the committee spent about an hour and a half discussing it. Here's a summary of the major changes:

- Recall that the House Health and Human Resources Committee (HHR) added a requirement that by July 1, 2016, public water utilities must submit source water protection plans. *Judiciary's version requires more extensive information and analysis to be performed and submitted as part of these SWPPs, as well as extensive information regarding the operation of the plant.*
- HHR added a requirement that public water systems install a second intake and/or capacity for 3-5 days' storage. *This requirement was removed. Instead, water systems with a single intake must include in their SWPPs an analysis of the technical and economic feasibility of pursuing one or more other alternatives that would allow for continued and reliable water service should the public water supply become unavailable or unreliable due to contamination or another reason. Among these alternatives are construction of a second intake and construction of additional storage. If one or more alternatives appear feasible, the public water system is to perform a cost/benefit analysis of pursuing the option.*
- *Judiciary's version eliminates the exemptions found in previous versions, and confines "waivers" to the following: 1) water; 2) natural gas or propane tanks, which are regulated elsewhere; 3) septic tanks; 4) pipeline facilities and hazardous materials pipeline, both of which are regulated elsewhere; 5) equipment or machinery containing substances used for operational purposes; 6) mobile tanks, trucks or railcars that are located on a site for less than 60 consecutive days; 7) liquid traps or gathering lines associated with oil and gas production; and 8) surface impoundments, pits, ponds or lagoons. Waivers for other categories of ASTs may be granted by the DEP by legislative rule.*
- *Judiciary's version also redefines aboveground storage tank to include tanks "made to contain an accumulation of more than 1320 gallons of fluids that are liquids at standard temperature and pressure," and then goes on to discuss tank construction materials, etc. Presumably, this 1320-gallon figure comes from 40 CFR 112 on oil pollution prevention . . . but that regulation applies the 1320-gallon figure to the "aggregate aboveground storage capacity of the facility," and not to individual tanks.*

- Also excluded are “process vessels,” which are vessels or containers used to manufacture or mix chemicals.
- The definition of “secondary containment” was also revised to make it clear that the constraining structure is required to have an impermeable base, and be of sufficient capacity to contain the entire contents or the single tank or the largest tank, even with additional rain entering the containment structure. The structure must also prevent any leaking fluids from entering groundwater, or breaching the containment and flowing into surface waters.
- In order to facilitate the DEP’s inventory of all aboveground storage tanks, owners of all tanks meeting the bill’s definition would be required to submit a registration form to identify the tanks’ characteristics and contents as of July 1, 2014.
- Any NPDES permit within a zone of critical concern for a public water system’s intake must be an individual rather than a general permit.
- The abstract goes on to say that “Specific citizen suit language will be added to the draft, consistent with this right to enforce violation of the NPDES permit standards as a violation of the Federal Clean Water Act.”

The Judiciary draft itself is located here: <http://www.legis.state.wv.us/SB373%20-%20HJUD%20amendment.pdf>

WV Rivers Coalition Releases Follow-up Report



WVRC Science Advisor Evan Hansen presenting to the House Judiciary Committee Wednesday

The new report, “[Potential Significant Contaminant Sources above West Virginia American Water’s Charleston Intake: A Preliminary Assessment](#),” is available online.



It's Time to Let Your Legislators Know You Want a Strong Water Protection Bill – Please Call Today!

The House Judiciary Committee could vote by Sunday on SB 373, related to the protection of water resources. Please contact [members of the committee](#) TODAY and tell them to protect our water supplies by:

1. Minimizing exclusions to assure no enforcement loopholes
2. Making sure community members are included in source water protection planning and have access to information about the contaminant threats to their water supply
3. Providing for citizen action when the government fails to enforce the law

Contact the House Judiciary Committee [members](#) now!

It's Time to Let Your Legislators Know You DON'T Want Our Municipal Solid Waste Landfills Filled With Drill Cuttings!

The House of Delegates on Wednesday passed HB 4411 on a vote of 81 -15, with 4 members not voting. The bill as drafted still allows unlimited amounts of drilling mud and drill cuttings to be deposited in commercial landfills, with no exemptions for our small Class B landfills. A floor amendment offered by Delegate Dave Pethtel (D-Wetzel) and Delegate Mike Manypenny (D-Taylor) would have protected current tonnage caps for Class B landfills. The amendment was defeated by voice vote. The bill now goes to the Senate.

Contact Senate Government Organization committee members <http://www.legis.state.wv.us/committees/senate/SenateCommittee.cfm?Chart=govo> and Senate Judiciary committee members <http://www.legis.state.wv.us/committees/senate/SenateCommittee.cfm?Chart=jud>

Ask them to insist that legislation regulating the disposal of drill cuttings creates **separate** hazardous waste landfills **specifically for drill cuttings**; that those landfills be **paid** for by the drilling companies **not** by tax payers; and that monitoring of the waste and the leachate for radioactivity and toxicity be required.

Future Fund Bill Awaits Action In The House

SB 461, the WV Future Fund Bill, passed the Senate on February 21st and is now sitting and waiting for action along with a slew of other bills in the House Judiciary committee.

Tick, tick, tick time's awaistin'!!!

BIG Citizen WATER PARTY at the Capitol March 8

WVEC is participating in a celebration of our right to clean water – **State Capitol Building from 11:00 a.m. – 4:00 p.m.** in the **Upper Rotunda, on the Senate side of the well.**

This will be the FINAL DAY of the 2014 legislative session. Join us and many other groups to be seen and heard. Let's stand up for clean water!

The activities this day include speakers & musicians. Food will be provided.



Shameless Plea

Ahhhh - as the end of the 2014 legislative session comes into view, we look forward to long days stretching into long nights as we push ourselves till the bitter end!

As we continue to lobby on SB 373 (water bill), HB 4411 (landfill bill) and other legislation still alive we need your help to fund us - not only till midnight Saturday March 8th. We immediately face a possible special session, interim sessions and the E-Council needs your support for on-going policy work and stipends for the lobby team. Even though the regular session ends at the stroke of midnight when the gavel falls, we still lobby.

Thanks to all of you for the continual donations that have come in throughout the session. We can't tell you how much these funds have meant to us. We know you are out there allowing us to be your voice at the capitol. We know through your dollars of support and the many notes of encouragement and appreciation we have received that we are in fact appreciated for being here and the accomplishments we are making.

Please consider sending in yet **one more** donation if you have already given – and making a donation today if you have not as yet done so. Any amount you can afford helps. It all adds up as they say – and we certainly know this to be true!

*Thank you,
The 2014 WVEC Lobby Team*



Worth the Read

Crunch Time Coming for Chemical Spill

By Ken Ward Jr. – Charleston Gazette – February 28, 2014

<http://blogs.wvgazette.com/coaltattoo/2014/02/28/crunch-time-coming-for-chemical-spill-bill/>

Feds Still Working on Leak Impact Studies

By Ken Ward Jr. – Charleston Gazette – February 26, 2014

<http://www.wvgazette.com/News/watercrisis/201402270128>

Global Warming Is A Reality And It's Almost Too Late To Take It Seriously

By Laurie David, Founder of the Stop Global Warming Virtual March,

[StopGlobalWarming.org](http://www.stopglobalwarming.org) - February 24, 2014

<http://webmail.c.earthlink.net/wam/MsgAttachment?msgid=54551&attachno=1&folder=NBOX&x=-1323388605>

Calendar of Events

March 8: BIG Citizen WATER PARTY at the Capitol. To be held at the State Capitol Building, from 11:00 a.m. – 4:00 p.m. in the **Upper Rotunda, on the Senate side of the well.** This will be the FINAL DAY of the 2014 legislative session. Join us and many other groups to be seen and heard. Let's stand up for clean water! The activities this day include speakers & musicians. Food will be provided.

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 17: Drinking Water Source Protection meeting. Beverly Hills Presbyterian Church – 469 Norway Ave., Huntington. Begins at 7 PM. Sponsored by the League of Women Voters.

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. Includes gourmet luncheon.

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



Support the West Virginia Environmental Council

P.O. Box 1007, Charleston WV 25324

Phone: (304) 414-0143 www.wvecouncil.org

_____ Membership _____ Change of Address _____ Donation

Name: _____

Address: _____

City, State, Zip: _____

County: _____

Phone: _____ e-mail: _____

Student / Senior:	_____ \$10	Regular:	_____ \$25
Seedling:	_____ \$50	Sustaining:	_____ \$100
Enviro Steward:	_____ \$250	Canopy:	_____ \$500
Old Growth:	_____ \$1,000	Other:	_____

WVEC is a 501-C4 not for profit organization registered with the WV Secretary of State. Donations are not tax deductible.

WVEC Legislative Update Newsletter

February 28, 2014