



*West Virginia Environmental Council's*

# Green

# Legislative

# Update

*Published Weekly During West Virginia's Legislative Session*

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**Date: February 27, 2004**

## Under the Dome

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

### Week 7 – Whine, Whine, Whine . . .

Years of constant and incessant whining have finally paid off for the water polluters in West Virginia.

This week the judiciary committees in both the House and Senate caved in to the “whines” of the various industry lobbyists that make up the Dirty Water Coalition and stripped almost all of the new protective standards from SB 353, the EQB water quality rule.

One of the winning whiners was the Chamber of Commerce, who succeeded in getting protective standards for 69 new toxins stripped from the rule – in spite of the fact that the federal EPA recommended the standards and said many of these toxins cause cancer.

Another winning whiner was the Independent Oil and Gas Association, who succeeded in keeping some 350 trout streams from being added to the state’s list of protected trout waters – in spite of the fact that DNR has documented that these streams are, in fact, trout streams.

The WV Coal Association was also a winning whiner (they are, after all, the top-dog whiners in the state, hands down) who after years of whining finally succeeded in getting water quality standards reduced for manganese and aluminum – in spite of the fact that EPA has twice disapproved these lower standards. Persistence pays off, boys.

But the “Whiner of the Year” award has to go to the WV Farm Bureau, who may actually succeed in getting the legislature to eliminate the Environmental Quality Board as the agency that sets our water quality standards.

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## Let’s Trash This Idea

*Conni Gratop Lewis, WVEC Lobbyist*

Approximately half way through the session, HB 4462 was introduced. It’s a bill sponsored by southern WV delegates to permit certain solid waste facilities to accept solid waste up to 100,000 tons per month.

For those who remember the garbage wars of the early 1990s, this brought back bad memories. As well it should. At that time developers tried to establish huge landfills that would take in trainloads of trash from East Coast cities. After all, we were poor, had all these hollers and hilltops not being used for profitable purposes and we had no decent solid waste laws – a perfect combination for a developer looking to make scads of money at someone else’s expense.

That all changed when we finally did pass decent solid waste legislation. It created county solid waste authorities, established limits on landfill size (30,000 tons per month), created standards for landfills to meet, and even provided for referenda in those counties that wanted huge landfills. The bill faced uphill battles and very nearly didn’t make it through. It even led to a special session that seemed endless, but really only lasted a month or so.

The landfill proposal that generated the most controversy was Jack Fugett’s proposal for a 100,000 ton per month landfill in McDowell County. It very nearly split McDowell right down the middle. McDowell County is so desperate for jobs and money that it actually had the referendum and passed it. The developers did get a PSC permit and did go through all the hoops.

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# Gasoline Wars Are Coming, Governor Wise (And We Are Trying To Prepare The Governor To Be Ready)

Allan Tweddle, WVEC Lobbyist

There are two chain e-mail letters circulating that are the first good ones I have seen. Ignited by gasoline selling at over \$2.00 per gallon and, predicted to go to \$3.00, one letter asks everyone to **not** buy gasoline on a certain day of the week.

The other suggests that we all boycott one company, on the premise that a drastic drop in their sales nation wide will force them to lower prices. It's a good theory, but will enough people participate to make it work? The target is good old EXXON/MOBIL.

Knowing that EXXON was the oil company that owned the EXXON-VALDEZ that ruined many lives of the small business men, killed millions of birds fish and animals, and devastated Alaska's Prince William Sound for decades, I would prefer the second suggestion — BOYCOTT EXXON. (Did you know that 20 years later, they have still not paid up? But I digress.)

With the Middle East in constant turmoil, we West Virginians need to be thinking more aggressively about how we are going to insulate ourselves from the gasoline war that I am suggesting is inevitable.

That's just one additional reason why we submitted the energy conservation plan to the Governor, (See G.R.E.E.N. of Feb 13) And on that front, we have had a couple of good conversations with key staffers. Our plan seeks to aggressively identify and achieve energy conservation in all State buildings and vehicles. (Hybrids Governor, THINK HYBRIDS). Because our proposal does not require legislative action, discussions will probably not move further until after the current legislative session.

We are cautiously optimistic that the WVEC energy conservation plan will at least be considered by the governor, and we will have yet another opportunity to make a positive difference. We may call upon you to write and e-mail support when we know it is being contemplated.

## Water Quantity Bill Barely Trickling

Nothing happened on the water quantity/study bill this week (SB 163). We have been advised (by someone who should know) that it will be taken up next week, after the House Judiciary Committee finishes with House bills.

### To Contact your Representatives on Issues:

Legislative Reference & Information Center  
MB-27, Building 1- State Capitol Complex - Charleston, WV 25305  
304 347-4836 toll free: 1 877 565-3447

On Line: [www.legis.state.wv.us](http://www.legis.state.wv.us)

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## Under the Dome ..... continued from page 1

The Farm Bureau is still so angry over the state's antidegradation implementation plan that they can't see straight – in spite of the fact that they are EXEMPT from almost all of its provisions.

What the Farm Bureau (along with a supporting cast of all the rest of the water polluters in the state) really wants is a process they can control from start to finish, and an end result that they can guarantee.

Unfortunately for us, at this hour the West Virginia legislature appears poised to give them what they want.

How quickly the tone has changed here.

**“We also must continue to protect the quality of water in our streams and rivers to preserve them for future generations. We must reject any attempt to weaken our water quality rules.” – Governor Bob Wise, State of the State address, January 14, 2004**

Governor, it may be time to get out your veto pen.

Remember to keep your bird feeders full this week, so you can witness the wonderful spring transformation of our truly fine-feathered friends.

## Legislature Passes Weak ATV Bill

*Conni Gratop Lewis, WVEC*

The ATV bill conference committee report finally was approved by both houses on Thursday.

Children's safety advocates did get a good safety bill out of this whole mess and we should all be relieved about that aspect. It is a much better bill than last year's version, in that regard. It even includes parental responsibility language for the foolish parents who let their kids ride ATV's in violation of the law.

Final tweaking included a provision that allows counties with “comprehensive plans” to ban ATV use on roads within the county. This provision allowed some long time safety advocates to vote “yes,” since their counties will be protected.

Does your county have a comprehensive plan? If yes, and if the governor signs the bill (likely), it's time to get to work at the local level.

If not, your county's public lands are at risk until next year. This is not acceptable.

Between the time the bill becomes law and the counties vote for a ban, 21,000 miles of the state's 34,000 miles of roads are open to ATV operators. This is not acceptable. **Let your legislators know you are unhappy.**

*Green Legislative Update*

## Water Wars Have Returned

*Allan Tweddle, WVEC Lobbyist*

Some might say the West Virginia Water Wars started in the Anti-Deg debate. Certainly the combatants were clearly identified back then. It was those who want to drink clean water against those whose jobs it was to fight that concept. The lawyers and industry types who have allowed their misguided and narrow interest zeal for profits at any cost to take over their sense of ethics emerged on the scene of those debates.

The “Dirty Water Guys” are back. And they just emerged again from under a rock somewhere to pull their tactics in BOTH houses. “To hell with worrying about what we leave our children...and their children” they must be saying. “Just because the US EPA has identified 69 toxic chemicals that we use and are dangerous if found in our drinking water, “we” good folks in the Chamber and industry cannot *afford* to measure and report to regulators how much of them we are discharging”.

“And while we are at it, let's stop calling all these West Virginia Rivers ‘sources of Drinking Water’...and ‘trout streams’...such nonsense”. Or maybe they are saying “Just because a bunch of scientists at DNR, EPA, EQB want these labels...what do they know about our business...and our need for hiding what we are doing with the water...it's our water...not theirs! Why, ever since King James II established the principle of Riparian Rights, we have gone to court enough times to show that what we do with our water is none of your business...just because you might want to drink it...or some trout might want to swim in it...such nonsense.”

This week they brought a new twist to an old technique of divide and conquer. Simultaneously, in both House and Senate Judiciary committees, we believe that they coerced their legislative friends to introduce a bundle of rules. In the bundle they included rejecting the scientific recommendations of US EPA, our own EQB recommending the monitoring of these chemicals, the designations for Category A, Drinking water, and the DNR designation of Trout Streams.

In the House committee, Delegate Fleischauer made an impassioned plea, to no avail, in which she recalled her mother's unsuccessful struggle with cancer caused, it is believed, by exposure to just one of the chemicals that is on the list. Many of the chemicals on

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# Your Hard Work Pays Off! Clean Elections Victory!

*Julie Archer, WV Citizen Action Group*

**On Monday, the Senate Judiciary Committee voted YES on Clean Elections with a 10-4 vote!** This wouldn't have happened without all your calls, e-mails and letters - not just this past week, but over the long haul. The vote was truly bi-partisan with Republican Senators Andy McKenzie and Lisa Smith voting for the bill along with Democrats Mike Oliverio, Larry Rowe, Jon Blair Hunter, Jeff Kessler, Herb Snyder, Joe Minard, Evan Jenkins, and Anita Caldwell. **Senators voting against the bill were Steve Harrison, Mike Ross, Russ Weeks and Frank Deem.**

Senator Harrison amended the bill to increase the qualifying contributions from \$5 to \$20 a person. Senator Hunter tried to persuade him to change the amendment so that folks could contribute **between \$5 and \$20**. Senator Harrison refused to accept this suggestion. Then, despite amending the bill to his liking and having the opportunity to amend it further, Senator Harrison still voted against the bill!!

Please call those Senators who voted YES and thank them for supporting this concept, and keeping the idea alive. Senators Larry Rowe and Jon Blair Hunter stood out as the bill's advocates in Monday's debate. Senator Randy White was out sick and therefore unable to take part in the vote but he has been an outspoken and strong supporter of Clean Elections on this committee. He deserves our thanks as well!

If your Senator voted against the bill, let him know you are disappointed! Ask why he is against this **voluntary** parallel funding track that will **cost each voter only about \$1 a year and will allow candidates to run without being beholden to special interest dollars!**

**The Public Campaign Financing Act (SB 270) now goes to the Senate Finance Committee.** When Finance Committee member and bill co-sponsor Senator Brooks McCabe heard the news he was anxious to try to get the bill on the committees agenda. Finance has yet to take the bill up, but our understanding is that if it makes it onto the agenda at this point it will be with the blessing of Senate President Earl Ray Tomblin. A green light from the President would itself be a victory, and would likely improve its chances of passing. However, calls to members of the Finance Committee can't hurt, and at the very least it would be great to thank Senator McCabe and the other committee members — Senators Vic

Sprouse, John Unger and Tracy Dempsey who sponsored the bill.

On Thursday, we had another victory when the House sub-committee passed out a pared down version of HB 4260. As amended the bill applies only to the Board of Public Works. The rationale behind limiting the bill to candidates for Attorney General, Secretary of State, Treasurer, Auditor and Agriculture Commissioner, is that it would be less expense to fund and can serve as a pilot program that can be expended later to include other offices. The committee substitute also includes a funding mechanism – a 10% surcharge on civil and criminal penalties over \$1,000. As we go to press, we're anticipating a vote in the full House Judiciary Committee.

## Water Wars Have Returned

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the list are known carcinogens. Delegate Mahan at least got an amendment requiring "another study to be reported by January 31, 2005.

What is infuriating about all of this is that the delegates apparently had not read *the list* of toxic chemicals, and *the list* of all the States that have already established regulations controlling these toxins, before they voted.

I wanted to get up and scream, "How the **hell** can you all make any semblance of an informed decision without seeing what we are talking about?" "And furthermore, why do you suppose that the states of Delaware, Kentucky, Maryland Pennsylvania and Virginia have already established regulations. Other than delaying for another year so industry can continue to spend money on lawyers fees instead of monitoring equipment, why are we re-studying something that has already been studied to death by scientists in agencies charged to protect our water...WHY?"

But I didn't. I remained subdued...taking my own advice of last week. It appears that we lost this battle. But we have not lost the war. **DRINKERS OF CLEAN WATER UNITE...WE HAVE ONLY BEGUN TO FIGHT.**

I've said it before, and I will say it again. **Water is rapidly becoming the most important resource in the world.** Wars have been fought over water all through history. It is going to happen again, and one of the battlegrounds is right here in West Virginia.

So during this next year, we must re-energize the troops to fight the water war battles again. I hope that you are all ready.

## Let's Trash This Idea

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But they never ever did operate a landfill. At 50,000 tons, it wasn't profitable. The economics of landfills changed during the 1990s. In other words, McDowell county took a chance and got nothing.

So the developers have a new proposal, that merely requires the legislature to allow a county that's had a solid waste referendum to increase the tonnage to 100,000 tons per month by following certain procedures. This is a proposal that only works if the garbage comes from large cities in other states. Oh, and it reduces the tipping fees on tonnage over 50,000.

This new proposal will allegedly create jobs, allow an AML site to be cleaned up and generate revenues for county Economic Development Authorities. It will even result in a sewer system for the community of Capels.

The Beckley based consultant delivered a sales presentation this week and I don't really get it. Why would anyone want to revisit the garbage wars? Why should the new developer be trusted to deliver when the old one couldn't? Why no mandated referendum? And what's wrong with having the money go to the county government instead of the EDA?

As it turns out, the bill has some major flaws that would need fixed and it's way too late in the session. And there are too many legislators uncomfortable with the proposal.

It is highly unlikely, nay, virtually impossible that this bill will move forward this year.

In the meantime, if anyone has any viable ideas for salvaging the economy of McDowell County, please share them. If the economy were healthy, we wouldn't have this issue before us.

## E-Council Has Great Volunteers!

The WVEC Lobby Team wishes to thank all those great volunteers who come in to the office throughout the week, willing to help with **anything** we need. Each Friday, they flood in to help put the paper version of the Legislative Update together and in the mail.

These dedicated volunteers make all the difference in our ability to meet our deadlines: Regina Hendricks, Julian Martin, Mary Ellen O'Farrell, Fred & Liz Sampson, John Taylor and Chelena McCoy.  
*Green Legislative Update*

## Coal Pulls a Fast One - To Get Its Way ...

*Julie Archer, WV Citizen Action Group*

About two weeks ago, the Senate Energy, Industry and Mining Committee (EIM) rubber stamped SB 392, which amended the rules the Public Service Commission (PSC) uses to enforce the new "overweight coal truck law" that was passed last year. The rule change weakened a provision that requires shippers and receivers of coal to report weight and other transport information to the PSC by limiting it to those trucks operating in the 15 southern counties that make up the Coal Resource Transportation System (CRTS). The Public Service Commission and other opponents to the rule change have maintained all along that it is in conflict with the intent of the law.

SB 392 went to the Judiciary Committee, which at the recommendation of counsel passed the rule without the coal industry amendment. The Judiciary Committee then recessed so the Transportation Committee could hold a brief meeting. Transportation immediately took up a bill introduced by Senator Mike Ross, which removes the reporting requirement from the statute. SB 673 passed with no debate and in a 5-minute meeting the committee essentially took the teeth out of the law it passed last year.

Requiring shippers and receivers to report statewide established some level of accountability and by removing that requirement, it opens the system to abuse and will make it more difficult for the PSC to enforce the law.

There is little doubt that this pig is greased. Still, Senators need to hear from folks that they should NOT weaken the reporting provisions for coal trucks. Tell them that coal trucks driving in EVERY county should be accounted for. Look for an update next week on this blatant example of pandering to industry. Our strategy will be to fight it in the House, where we will likely call for a public hearing. *Stay tuned!*

"I must admit that I personally measure success in terms of the contributions an individual makes to her or his fellow human beings."

*Margaret Mead*

# Bills We Are Tracking

Bill Number	Title	Committee
<b>Senate Bills</b>		
SB 39	Allowing landowners to remove debris to prevent flooding ("Flood Thy Neighbor")	JUD
SB 60	Transferring water quality standard rule-making authority to water quality board (eliminate EQB)	JUD
SB 63	Requiring verification of notice to adjoining landowners of timbering operations	NR
SB 89	Relating to beneficial use of water treatment plant sludge	JUD
SB 155	Creating environmental excellence program	EIM
SB 156	Establishing Public-Private Transportation Act (Governor's version) ("Regional Airport"??)	ECD
SB 163	Creating Water Resources Management Act (Governor's Water Quantity Bill)	<b>Passed Senate – to H Jud</b>
SB 221	Establishing Public-Private Transportation Act of 2004 ("Regional Airport"??)	FIN
SB 231	Authorizing county commission to establish flood plain enforcement agency	<b>Passed Senate — to H PS</b>
SB 270	Creating Public Campaign Financing Act ("Clean Elections")	JUD
SB 293	Creating Beverage Container Deposit Act ("Bottle Bill")	JUD
SB 367	DOH rule relating to transportation of hazardous wastes	JUD
SB 386	DNR rule relating to public land corporation rule controlling sale, lease, exchange or transfer of land and minerals	FIN
SB 444	Requiring county litter control officers to enforce litter laws	<b>Passed Senate – Introduced in House</b>
SB 446	Relating to posting of unenclosed land	NR
SB 454	Relating to land-use planning	GOV
SB 475	Establishing State Trail Authority	GOV
SB 498	Permitting sale of timber severed in state parks in certain cases	<b>Passed NR – to FIN</b>
SB 539	Creating flood prevention task force	GOV

(All DEP rules will be worked from the House version, which is on third reading)

## House Bills

HB 4022	Creating "The All-Terrain Vehicle Safety Regulation Act"	<b>Passed Both Houses</b>
HB 4026	Establishing the water resources management act (Governor's water quantity bill)	JUD
HB 4027	Establishing a voluntary environmental excellence program	FIN
HB 4029	Establishing a program to report emissions of greenhouse gases	JUD
HB 4047	Creating a high growth business investment tax credit to encourage investment by state citizens and businesses in certain companies started by fellow West Virginians	FIN
HB 4068	Allowing the hunting of coyotes by use of amber colored artificial light with certain restrictions	<b>Passed House – to Senate</b>
<b>NR</b>		
HB 4147	Providing for the use of returnable containers for various drinking containers ("Bottle Bill")	JUD
HB 4166	Removing the description requirements in deeds for easements and rights-of-way for mineral leases	JUD
HB 4167	Creating the Exotic Animal Control Board to protect the health and safety of humans and the state's agricultural and forestry industries, its wildlife and other natural resource interests from the introduction or spread of disease	Gov Org
HB 4193	DEP – Rules bundle, including water quality standards	<b>On Third Reading</b>
HB 4212	DOH transportation of hazardous wastes upon roads and highways	R&T
HB 4231	DNR public land corporation rule	JUD
HB 4248	Continuing the office of environmental advocate	<b>Passed House – to Sen Gov</b>
HB 4260	Creating a system for public funding of election campaigns ("Clean Elections")	JUD
HB 4262	Creating the environmental excellence program	JUD
HB 4266	Requiring regulatory agencies of government, with exceptions, to study ways to expedite the issuance of licenses, permits and certificates	<b>Passed House – to Sen Gov</b>
HB 4270	Creating the north central West Virginia regional trails and recreation authority	Gov Org
HB 4312	Verifiable Science Act	ED
HB 4322	Establishing a state trail authority	Gov Org
HB 4351	Continuing the waste tire remediation program	<b>Passed House – to Sen Gov</b>
HB 4364	Including division of forestry employees in the assault and battery statute	<b>Passed House – to Sen Gov</b>
HB 4382	Adding a representative of labor to surface mining board	Gov Org
HB 4428	West Virginia Protection of Air Quality Related Values Act	JUD
HB 4450	Permitting sale of timber severed in state parks in certain cases	<b>Passed House</b>
HB 4454	Establishing the performance based permitting act	JUD
HB 4462	Relating to solid waste facilities handling more than thirty thousand tons of solid waste per month	JUD
HB 4480	Continuing West Virginia's participation in the interstate commission on the Potomac River basin	GOV
HB 4521	Increasing annual registration fee for underground storage tanks	JUD
HB 4570	Authorizing county litter control officers to enforce litter control ordinances	PS

\*\*\* **Please Note:** This Bill Tracking list is as current as we can get it today ... there's so much happening at the capitol, and simply not enough time to bring completely up to date - and bills are moving fast constantly at this point.



# Calendar of Events



**March 13:** Last Day of the 2004 Legislative Session.

**March 13:** A Day of Education, concerning new surface mining permit for Sundial WV area. Marshfork Elementary School, state route 3, Sundial WV (Raleigh County). Beginning at 11 a.m. Film presentations, maps of the destruction area, vigil and more.

**For more information:** Coal River Mountain Watch, (304) 854-2182 or [www.ohvec.org/events/calendar/marshfork.pdf](http://www.ohvec.org/events/calendar/marshfork.pdf).

**April 3:** West Virginia Garden Festival. WV Division of Culture & History, Charleston WV. From 9:30 a.m. ~ 4:30 p.m.

**For more information:** (304) 558-0162, ext. 130

**April 17:** Planning Your Herb Garden: What to Grow, Where and How. 10 am - 4 pm. La Paix Herb Farm, Alum Bridge. Pre-registration required. Cost is \$55 and includes complimentary lunch.

**To register & more information:** (304) 269-7681, [lapaix@iolinc.net](mailto:lapaix@iolinc.net), [www.lapaixherbfarm.com](http://www.lapaixherbfarm.com)

**May 8:** Migration Celebration 2004. New River Gorge NR. From 10:00 a.m. - 5:00 p.m. Features photo workshops, nature walks, West Virginia wildlife displays, live native birds of prey, birding walks, kids activities. Sponsored by Three Rivers Avian Center.

**For more information:** [www.tracwv.org](http://www.tracwv.org) or call 1-800-721-5252

**May 15:** 2nd Annual "Artists for the Environment" WVEC Spring Benefit. Perfater Law office building lobby. Experience a beautiful day with the arts! Visual arts, music, poetry, performance, and more. Booths, art auction, yummy edibles and drinks!

**For more information and to participate:** Contact Denise Poole, [deniseap@earthlink.net](mailto:deniseap@earthlink.net) or call her at the WVEC office: (304) 346-5905.

**May 28, 29, 30:** Vandalia Festival. Division of Culture & History. Three days of music, artisan booths, famous "liars contest" and lots more.

**For more information:** (304) 558-0162, ext. 130

**June 19 & 20:** Lavender & More Fair! La Paix Herb Farm, Alum Bridge, WV. Workshops, demonstrations, booths, garden tours, lunch, music and slide shows. Admission \$5.

**For more information:** (304) 269-7681, [lapaix@iolinc.net](mailto:lapaix@iolinc.net), [www.lapaixherbfarm.com](http://www.lapaixherbfarm.com)

**July 17:** Hydrosols, Essential Oils and Distillation Workshop. La Paix Herb Farm, Alum Bridge, WV. Complimentary Lunch. Cost is \$55, pre-registration required.

**For more information and to register:** (304) 269-7681 or [lapaix@iolinc.net](mailto:lapaix@iolinc.net), [www.lapaixherbfarm.com](http://www.lapaixherbfarm.com)



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## Support the West Virginia Environmental Council

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Phone: (304) 346-5905 [www.wvecouncil.org](http://www.wvecouncil.org)

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\_\_\_\_\_ \$ 500 Canopy

\_\_\_\_\_ \$ 1,000 Old Growth

\_\_\_\_\_ \$ Other

The West Virginia Environmental Council  
1324 Virginia Street East  
Charleston, WV 25301

***Time sensitive material ..... please deliver promptly, Thank you!***