



*West Virginia Environmental Council's*

# **GREEN Legislative Update**

*Published Weekly During West Virginia's Legislative Session*

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## **Under the Dome**

*By Donald S. Garvin, Jr.*

*WVEC Legislative Coordinator*

### **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 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.

But 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 last year 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 were simply removed from the rule.

So what DEP rules are we concerned about this year? Thankfully, not many.

We are only concerned about a couple of the proposed air rules. Most of the rules changes proposed by DEP this year are not controversial.

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

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

## **Before You Bite Into That Fish Sandwich - Read This!!!**

WV Division of Health and Human Resources (WV DHHR) has a site where they tell you how much fish you can safely eat - especially fish caught in our streams. <http://www.wvdhhr.org/fish>

Eating too much fish can be hazardous to your health. The biggest culprit is mercury pollution from power plants. But don’t tell the job-killing EPA!!! They want to save us from ourselves, we guess.



## **Member Organizations Win Big Over Patriot Coal on Selenium!**

Sierra Club, OVEC and WV Highlands Conservancy teamed up with Joe Lovett of Appalachian Mountain Advocates to win a big victory on water pollution from mines - specifically selenium pollution. Selenium impacts the reproductive system of many aquatic species and can be toxic to humans.

According to Ken Ward, writing in the Charleston Gazette, “The Patriot deal covers 43 pollution outlets associated with ten water discharge permits at three of Patriot’s mining complexes.” It is not clear how much the total cost of the cleanup ordered will cost Patriot, but it will have to pay \$750,000 in fines to the federal government. Patriot will also contribute \$6.75 million to the West Virginia Land Trust under the terms of the settlement. Additionally, they will have to stop mining at their Jupiter-Callisto Mine in Boone County. Read more about this exciting, monumental victory in Ken Ward’s blog Coal Tattoo in the Charleston Gazette at [www.wvgazette.com](http://www.wvgazette.com)

## **Of Princes, Principalities and Maps**

*By Leslee McCarty, WVEC lobbyist*

Aside from Marcellus regulations, nothing has stirred up the Legislature this year more than redistricting. A favorite discussion of students of political science, drawing new lines on the map and changing peoples’ representatives has far-reaching implications for voters, office holders and potential candidates. It is emotionally charged and very confusing, to say the least.

Those who make the lines always cite population changes as informing their decisions, but most observers look for protecting turf and making life hard for potential challengers to the status quo as reasons for the way the lines get drawn.

This year West Virginia got redistricted. Challenges to the legality of the lines for State Senate and House of Delegates did not succeed, but the way the Congressional lines were drawn is still in court.

So if you are looking to run for office or just want to know what district you will be voting in for the upcoming elections, where do you go? The Legislature website [www.legis.state.wv.us](http://www.legis.state.wv.us) has sections on redistricting, which by early next week will have easily readable maps showing the new districts. We worked hard this week to get them to change the posted maps which we thought were totally unreadable, especially the Senate ones. And they are going to fix the problem, so score one victory for the people!! But so far we haven’t had any success in getting the powers that be to post side-by-side maps of the districts now and the new ones. They said that would be confusing! We think it would make it less confusing, but if you want to check it all out, you be the judge.

When we were researching the map issue, we talked to the staff in the redistricting office and they reminded us that until the term of the person you elected to represent you expires, you can have three senators - two you elected before and a new one you will elect in November!!

We will write more on this, but just wanted to remind you that things have changed in some very fundamental ways and to encourage people who might want to run for office to get their hats into the ring. The filing period for candidates will be over soon, so think about running or supporting someone who will run. January 28 1012 is the last day to file. This section of the Secretary of State's website is helpful [www.sos.wv.gov/elections](http://www.sos.wv.gov/elections)

## Think Renewable

### **Important Recycling Resolution**

*By John Christensen, WVEC Lobbyist*

In order to preserve valuable landfill space and lessen the need for permitting of new landfills a very comprehensive recycling resolution will be introduced this session by Senator John Unger (D-Berkeley), the senate majority leader.

The resolution proclaims that municipal recycling rates have risen to 34% nationwide over the past forty years and it is proven that recycling actually stimulates economic growth and plays an important role in manufacturing by saving energy, and conserving valuable natural resources.

The resolution further proclaims that West Virginia's recycling industry collected, processed, and consumed more than 130,000,000 metric tons of recyclable material, valued at \$77 million; and using recycled materials in place of raw materials can result in energy savings of 92 percent for aluminum cans, 87% for mixed plastics, 63 % for steel cans, 45% for recycled newspaper, and 34% for recycled glass; and all recycling in general produces 10-20 times more jobs than land filling.

The resolution asks for House and Senate support for improvement of the collection, processing, and consumption of recyclable material throughout the state in order to create good paying jobs, foster innovation and investment in the state's recycling infrastructure which would in turn strengthen the manufacturing base and revitalize the state's economy. It also asks for support from the PSC Commission and the DEP to permit resource recovery facilities as a means to increase the collection of recyclable materials and the utilization of solid waste as a resource rather than a waste material to be landfilled.

This resolution was submitted in order to draw attention to the fact that WV is currently wasting opportunities in this field and could do much better by recognizing the value of expanded recycling programs infrastructure in order to process more materials for reuse, reduce, repurpose and recycle. WVEC supports recycling efforts and the expansion thereof and eagerly awaits this resolution to be submitted and passed.

## **MIT Study Confirms Our Suspicions!**

**Marcellus boom threatens climate change action, study says**

By [Ken Ward Jr.](#) (*excerpt from Charleston Gazette by permission*)

[Read the study](#)

The boom in drilling for natural gas in the Marcellus Shale and other similar formations will likely suppress the development of alternative energies that are urgently needed to combat global warming, according to a new study by researchers at the Massachusetts Institute for Technology.

Researchers highlighted some positive aspects of the boom in drilling for "shale-gas" reserves, such as help in lowering gas prices and stimulating the economy.

But they warned that a switch from coal to natural gas alone isn't nearly enough to reduce greenhouse gas emissions to the levels scientists believe are needed to curb the worst impacts of global warming.

"People speak of gas as a bridge to the future, but there had better be something at the other end of the bridge," said Henry Jacoby, an engineer and economist and lead author of the paper, which was published in the inaugural issue of a new journal, "Economics of Energy and Environmental Policy."

## **Cracker Fever!**

By *Leslee McCarty, WVEC Lobbyist*

If you are going to buy in to the industrialization of the Mountain State, you will need a 250-acre industrial facility to go with it. This is Governor Tomblin's logic as his bill to give tax breaks to an ethane cracker plant sails through the Legislature. Today the proposal blew through Senate Economic Development Committee and House Finance at the same hour.

Heck, at the rate we are pushing for a plant, it would not be surprising to hear we will find a way to donate a site. Marcellus wells are pumping out ethane, which a plant would convert into ethylene, which can be used to make plastics, tires, antifreeze and who knows - maybe some new food additives!?

Delegate Carol Miller was quoted as saying, "Imagine the psychological euphoria West Virginia would have, that the other states were looking to us because we got it."

As for the WVEC lobby team, we are managing to suppress our excitement.



## Energy Efficiency Update

By Cathy Kunkle, *Energy Efficient WV*

Join Energy Efficient West Virginia for a lobby day on Tuesday, January 24<sup>th</sup>! We will meet at 1pm in the rotunda of the capitol building (the main dome) - on the lower level next to the Information Desk. Members of Energy Efficient West Virginia will give you a brief orientation to lobbying and answer any questions that you have about talking to your legislators or the bills, as well as handing out fact sheets that you can provide to your legislators. If you wish to set up meeting times with your senators and representatives in advance, you can find their contact information on the legislature's website: <http://www.legis.state.wv.us/> (see "Who's my legislator?" in the lower right corner).

We will be lobbying for two bills that will help save West Virginia residents and businesses money on their utility bills, create jobs, and cut energy waste:

- ⤴ Senate Bill 162 ("Least Cost Planning"): This bill was introduced by Senator Dan Foster last Thursday and is now in the Judiciary Committee. The bill requires our power companies to file least-cost plans with the Public Service Commission every two years explaining how they plan to meet future electricity demand at the lowest cost to ratepayers. Specifically, the bill would require utilities to evaluate a range of scenarios, including both conventional power plants and energy efficiency, for meeting future power needs. In states where this process is done well, it leads to significant investment in energy efficiency because saving money through energy efficiency is cheaper than building new power plants.
- ⤴ Energy Efficiency Resource Standard: We expect this bill to be introduced early next week by Delegate Mike Manypenny and Senator John Unger. The bill requires electric utilities to achieve a reduction in electricity sales of 5% of 2010 levels by 2018 and sets a goal (that can be later modified by the Public Service Commission based on program implementation experience) of achieving a reduction of 15% of 2010 levels by 2025. Utilities can meet these targets by offering programs to help their customers save energy, such as rebates for more efficient appliances, weatherization assistance, industrial energy assessments and other programs. West Virginia's utilities also operate in Ohio and Pennsylvania where they are already meeting or exceeding similar energy efficiency targets in those states.

Tuesday's lobby day also coincides with [Industries of the Future Day](#) at the legislature. Industries of the Future is a group at WVU that provides industrial energy assessments and has helped businesses across the state save millions of dollars through energy efficiency.

## Chesapeake Bay Watershed Plan

West Virginia has released its draft Phase II Watershed Implementation Plan (WIP) as part of its requirement under the U.S. Environmental Protection Agency's Chesapeake Bay initiative.

The Phase II WIP continues the process of defining how West Virginia, in partnership with federal and local governments, will achieve the pollution load reductions required to support the EPA's Chesapeake Bay Total Maximum Daily Load. A TMDL is the maximum amount of a pollutant a body of water can receive and still meet its water quality standards.

It targets load reductions of sediment, nitrogen and phosphorus from sources such as agriculture, wastewater treatment facilities, non-point storm water runoff and permitted storm water.

Eight West Virginia Eastern Panhandle counties – Pendleton, Grant, Mineral, Hardy, Hampshire, Morgan, Berkeley and Jefferson – are part of the Bay Watershed. The Potomac River, which flows through the Eastern Panhandle, drains into the Chesapeake Bay.

A draft of the Phase II WIP is available at [www.wvca.us/bay](http://www.wvca.us/bay)

Public comment on the draft will be accepted through Feb. 20, 2012. Comments may be sent to Alana Hartman, WVDEP-DWWM, HC 63 Box 2545, Romney, WV 26757 or electronically to [alana.c.hartman@wv.gov](mailto:alana.c.hartman@wv.gov)

The final Phase II WIP is currently scheduled for submission to the EPA on March 30, 2012.  
*(From DEP Press Release)*

## **WVU Law Clinic to Provide Free Land Use Advice**

A new West Virginia University law clinic is offering free legal advice on land use issues to individuals and groups.

Managing attorney Nathan Fetty says the Land Use and Sustainable Development Law Clinic is an effort to strengthen West Virginia's resources to protect land and water.

Fetty tells says that much of the focus will be on the New and Gauley river watersheds.

Four law students will work begin work this week under the supervision of licensed attorneys. Fetty says the law students won't be involved in litigation. Their services could include drafting conservation easements or land use plans for local governments.

The clinic is funded by payments made by coal companies to settle pollution lawsuits brought by environmental groups.

(By the way, Nathan is the legendary "Boy Wonder" of the WVEC lobby team from ten or so years ago! We knew he was destined for good things!).

*(From an Associated Press article)*



## **A Kicking Good Time Was Had By All**

For the WVEC lobby team, there's just no better way to start, er, "kick off" the legislative session than with good friends, stimulating conversation, music and laughter.

Wednesday night was no different during our annual "Legislative Kick Off Blast", however it always seems to improve each and every year. Perhaps it's because of the obvious – the looming session – and the need to let off a little steam and take comfort in our friends. We know we are among kindred spirits who understand so well what we face each session under the capitol dome.

We'd like to thank everyone who stopped by and helped make the night so enjoyable (and to those of you who attended the WVU / Marshall basketball game we want you to know we understand!)

A special shout out to Andy Park and Chet Lowther for providing music; Delegates Bonnie Brown, Barbara Fleischauer and Mike Manypenny for speaking to the crowd; Jesse Johnson (AKA wine auctioneer) and Greg Carroll for the sound system and the endless generosity you always bring to every occasion.

Lets hope for a successful 2012 Legislative Session – and we will see you February 8<sup>th</sup> for E-Day at the Capitol followed by our annual E-Day Awards Dinner (see details below).

*WVEC Lobby Team: Don Garvin, Leslee McCarty, Denise Poole, John Christensen*

### **E-Day! - Wednesday, February 8<sup>th</sup>**

#### **At the Capitol**

9 a.m. till 3 p.m. – Senate & House Hallways & Upper Rotunda Alcoves  
Environmental Citizen Lobby Day & Exhibits  
Weaving a progressive future – more displays!

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

Charleston Women's Club, 1600 Virginia Street East

6:00 p.m. – 9:00 p.m.

Soup & Salad Buffet, Cash Bar

Award presentations: 7:00 p.m. – 8:00 p.m.

Mother Jones: Leslee McCarty & Carol Warren

Chuck Chambers Public Service: Delegate Bonnie Brown & Delegate Mike Manypenny

Green Entrepreneur: Dale Hawkins (Fish Hawk Acres)

Linda Schnautz Courage: Maya Nye

Grassroots Activist: Kathy Cash

Cost: \$15 donation



## Calendar of Events



**January 24:** Energy Efficient West Virginia Lobby Day. State Capitol. Meet at 1pm in the lower rotunda next to the Information Desk. For more information see article by Cathy Kunkle in this update on page 6.

**February 8:** E-Day At the Capitol. Environment Day - Senate & House hallways / Upper Rotunda area. Featuring displays, demonstrations, citizen lobbying & more. 9 am – 3 pm. Mark your calendar now, and join us for our annual environment day at the state capitol. Over 25 environmental organizations, green businesses, artisans and other groups representing a visionary future for WV will be on hand this year. For more information or to reserve a space: [deniseap@earthlink.net](mailto:deniseap@earthlink.net)

**February 8:** E-Day Awards & Benefit Dinner. Woman's Club of Charleston, corner of Elizabeth St. & Virginia St., Charleston. From 6 PM – 9PM. Gathering to follow a full day at the capitol - relax and help us celebrate as we bestow our 2012 awards to eight exceptional honorees this year! Dinner will include an array of homemade soups (vegan, vegetarian & meat based), salads, breads and desserts. Cost: A donation of \$15 per person.

**February 25:** Buffalo Creek Day. Commemorating the 40<sup>th</sup> Anniversary of the Buffalo Creek disaster. State Capitol Lower Rotunda. 2 pm – 5 pm. Speakers, music, press event & more.

**March 10:** Legislative Session ends.

### 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](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:**

[www.ohvec.org/ovec\\_news.html](http://www.ohvec.org/ovec_news.html) and [www.ohvec.org/news\\_gen.html](http://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](mailto:deniseap@earthlink.net)

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## Support the West Virginia Environmental Council

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Phone: (304) 414-0143 [www.wvecouncil.org](http://www.wvecouncil.org)

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