



West Virginia Environmental Council's

GREEN Legislative Update

Published Weekly during West Virginia's Legislative Session

Volume: 23 Number: 6

Date: **March 22, 2013**

Under the Dome

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

Week 6 – Whine, Whine, Whine . . .

There is a LOT of whining going on at the Legislature this session.

Leading the list of whiners (as always) is the West Virginia Coal Association, which is supporting a long list of bills that would benefit the industry, but not the citizens of the state.

First there was the selenium bill (HB 2579) which claimed there really is NO problem with toxic selenium being discharged from mountaintop removal mine sites (never mind the deformed fish). And it's too expensive to treat to remove the selenium (if there is a problem). Whine . . .

Then there's the "Intrastate Coal and Use Act" (HB 2597) which would eliminate federal oversight of coal mined and burned within the state. That mean old EPA is killing us with its "war on coal."

When Del. Stephen Skinner (D-Jefferson) pointed out in committee that the bill was unconstitutional, Del. Kelli Sobonya (R-Cabell) replied, "The Legislature passes things that are unconstitutional all the time. That's no reason to vote against this bill." Whine, whine . . .

And then there is SB 488, the real intent of which was to make protesting against mountaintop removal mining a **felony**. Whine, whine, whine . . .

When that bill was taken up in Senate EIM Committee this week, I felt obligated to say something. So when committee chairman Doug Facemire (D-Braxton) recognized me to speak to the bill, I simply said, "Mr. Chairman and members of the committee, on behalf of all tree huggers, tree sitters and tree climbers everywhere, ***I protest!***"

Thankfully, cooler heads prevailed, even in that committee, and the bill was amended so that the act of protesting and the practice of civil disobedience are not treated as felonies.

Not to be outdone by the coal industry, the oil and gas guys stepped forward. Leading the charge was Halliburton who worked out an amendment to the Horizontal Well Control Act rule to limit the reporting requirements of the contents of the chemicals they use for hydraulic fracturing, and to make physicians sign confidentiality agreements when they need to know what those chemicals are. Whine, whine, whine, whine . . .

Finally, and perhaps most disappointingly, are a few waste haulers and landfill operators who want the Legislature to repeal the ban on the disposal of electronic devices in landfills (SB 449).

Talk about bad timing: the ban was adopted by the Legislature in 2010, and as of January 1, 2011, televisions, computers, or video display devices with a screen that is greater than four inches measured diagonally are banned from being disposed in state landfills. The DEP finally developed a rule to implement the ban, and the Legislature is considering that rule this session.

Repealing the landfill ban will remove any incentive for consumers, manufacturers and retailers to recycle these items.

The whining is incessant, folks.

Spring has blown in like a lion this week, so keep your bird feeders full . . . and maybe you'd better tie them down!

Land Stewardship Act – HB 2590 / SB 342 Strange Brew

*By Denise Poole
WVEC Lobbyist*

The stated purpose of this bill is “to authorize the creation of a public nonprofit corporation and governmental instrumentality . . . to collectively address several environmental and economic development programs. The corporation is established to promote the productive reuse of idle and underutilized commercial, industrial and mining properties; to support more efficient use of existing public infrastructure; encourage increased job creation with living wages, renewed community vitality and tax revenue generation while protecting public health and our natural resources.”

This is a Governor's bill, and appears to benefit DEP and current property owners of contaminated sites while by-passing our 'Brownfields' law (established in 1996). It applies only to commercial, industrial and mining properties.

I can only describe this bill as a *strange brew* . . . very convoluted and vague while at the same time targeting West Virginia's current 'Brownfield' sites in order to expedite the sale and development of these sites. Although the current owners are held liable for the contaminated property, they are relieved of paying property taxes and according to Ken Ellison (Division of Mining & Land Restoration – DEP) “avoid having enforcement coming after them.” Mr. Ellison certainly advocated for the 'Land Stewardship Act' emphasizing it would “work hand in hand with the Brownfields program.” He touts it as a vehicle to help the economic development of West Virginia cities.

Meanwhile ... where does this really leave our Brownfields law? Why is there a need to develop a nonprofit corporation?

The bulk of the bill's language details setting up the nonprofit. It establishes a voluntary state land bank program. This newly created nonprofit would then act as a liaison between the current properties owners, DEP and the buyer of said property. Questions asked in House Judiciary Committee brought to light the fact that there seems to be a lot of latitude regarding the details and agreement between the seller and buyer.

The nonprofit could solicit and accept gifts, grants, labor, loans, services and other aid from any person, or the federal government. It could invest money of the corporation; contract with Regional Brownfield Assistance Centers; while the property of the corporation and its income and operations are exempt from all taxation by this state or any of its political subdivisions.

Actually, this bill was first introduced last year, when WVEC decided it would be in our best interest to amend the bill so the board of directors would include someone from our organization. The bill died before the end of the session. The bill emerged this session with the same number of seats on the board to include: Board meetings shall be chaired by the Governor (or designee). The board is comprised of: *Three* seats appointed by the Governor, 4) Chamber of Commerce, 5) Manufacturers' Association, 6) WVEC, 7) Secretary of the DEP, 8) Secretary of the Dept. of Commerce, 9) Senate appointee, 10) House of Delegates appointee. Each entity nominates three, and one is picked from this list by the Governor.

The bill was taken up on Friday March 15th in House Energy, Industry & labor, Economic Development and Small Business. Delegate Fleischauer (D-Monongalia) proposed an amendment to add a seat on the board to include a member from AFLCIO. This amendment passed, and the bill passed to House Judiciary where it was taken up Tuesday.

HB 2590 was debated in House Judiciary for **two hours** with numerous questions asked of council Joe Altizer and Ken Ellison, DEP Division of Mining & Land Restoration. In the process, delegates Clif Moore (D-McDowell), Justin Marcum (D-Mingo) and Michael Ferro (D-Marshall) submitted an amendment to include two *additional* seats to the board: 1) The Coal Association and 2) UMWA. The amendment passed.

Delegate Mike Manypenny (D-Taylor) offered an amendment which also passed; "In the event of a conveyance of property to the corporation, at the discretion of the corporation, the prior owner may be required to post a bond or other type of financial assurance for any potential future remediation, in order to insure the original owner's liability is maintained."

The Senate version, SB 342 was taken up Wednesday in Economic Development and passed quickly, with no discussion or questions. DEP Director Randy Huffman was in attendance, along with representatives from the Governor's office. They were practically jumping for joy, and obviously relieved - exclaiming "I like this committee!" And, "this is so much better than House Judiciary!"

The Senate version still maintains the original ten seats to the board, and no additional amendments. It now goes to Government Org.

Strange Brew – what are you trying to do?

Help Put Energy Efficiency on the House Judiciary Committee's Agenda

Ask Chairman Miley to Run HB 2210!

*By Cathy Kunkel, Stacy Gloss & Dan Taylor
Energy Efficient WV*

First, thank you to our supporters who contacted members of the Government Organization Committee, made calls, sent e-mails and spoke with Committee members to encourage Chairman Morgan to put the Integrated Resource Planning Bill (HB 2803) on their agenda.

Thursday we learned that Chairman Morgan has decided not to run the bill through his committee.

Despite this news, we still have the chance to advance energy efficiency in WV this Legislative session with HB 2210. We have been closely following the [energy efficiency resource standard](#) bill currently before the House Judiciary Committee. And, it is crunch time.

Time is running out and our message is time sensitive. All bills must pass out of their committees next week to allow for enough time for a floor vote; next week is a major deadline.

We need to act now to persuade Judiciary Committee Chairman Tim Miley to run HB 2210.

Can you help us get to 25 calls into House Judiciary Committee Chairman Tim Miley today?

Delegate Miley knows our position at EEWV, but he needs to hear from voters and the public that you support this bill too.

Please e-mail or call House Judiciary Committee Chairman Tim Miley and encourage him to put HB 2210 on his committee's agenda for a vote. Delegate Miley can be reached at (304) 340-3252 or tim.miley@wvhouse.gov.

Here is a sample script you can use when you call: "I support HB 2210, the West Virginia Energy Efficiency Resource Act, which would lower electric bills by requiring our utilities to invest in energy efficiency. Please put a strong version of this bill on the Judiciary Committee's agenda."

A Note of Thanks

Staff at EEWV thank you for your strong support for energy efficiency in West Virginia. We are remaining positive and hopeful that the House Judiciary Committee will provide leadership and direction to the public Service Commission and regulated electric utilities to support common sense energy efficiency investments that benefit all West Virginians. If you have any questions, please contact us.

Complete Streets ~ SB 158 / HB 2494

This bill is a huge step in the right direction in recognizing that *all* modes of transportation be considered as integral to our transportation systems throughout the state. It encourages our streets be safe, efficient and convenient for travel by all users – and considered in the planning and design of pathways in our cities.

It is moving through the legislative process with much support and is expected to pass this session. It passed Senate Roads and Transportation March 12th, then Senate Gov. Org. on Wednesday, and was on first reading today (22nd).

Complete Streets encourages the Division of Highways “view all transportation improvements as opportunities to improve safety, access and mobility for all travelers.” It also sets up an advisory board consisting of sixteen members, so pedestrians, bicyclists, motorists and transit riders are considered in the policies, design guidance, planning, development, construction and maintenance of roads in this state.

Feds OK coal slurry dam expansion MSHA approves height taller than Hoover Dam

By Vicki Smith

The Associated Press

<http://www.wvgazette.com/News/politics/201303210169>

March 21, 2013

MORGANTOWN, W.Va. (AP) -- Federal regulators have approved Alpha Natural Resources' plan to expand one of the nation's biggest coal slurry impoundments to a height taller than the Hoover Dam.

The plan will also increase the volume of waste it holds to 8.5 billion gallons.

The Mine Safety and Health Administration confirmed the approval this week and provided The Associated Press a copy of a letter giving Virginia-based Alpha permission to expand the Brushy Fork impoundment near Whitesville in southern West Virginia.

Alpha calls MSHA's approval an incremental development in what has long been part of the construction plan. The impoundment was built in the 1990s by Marfork Coal Co., which was a subsidiary of Massey Energy Co. before Alpha bought Massey in 2011.

Since 2009, Brushy Fork has held 6.5 billion gallons of coal waste that Alpha says is mostly solid, not liquid.

Though the coal slurry impoundment has never failed, some citizen-activists question whether it was properly built. Retired miner Joe Stanley doubts the years-old waste inside has ever properly compacted and dried, meaning Alpha could be building on an unstable base.

"What about the additional weight placed on top of that?" he said. "I don't think this is going to fail. I truly believe it will fail. It's just a matter of time."

If it does, emergency plans suggest a 100-foot wave of sludge would reach Sherman High School in 17 minutes.

"This thing could go all the way to Charleston," Stanley said, "depending on what it takes out and which way it goes."

But Alpha says past state and federal reviews found no deficiencies and that the company is "committed to designing, building and operating facilities safely."

"We make the safety of our impoundments among the highest priorities in our company because we recognize the responsibility that comes with impoundment ownership," said Alpha spokeswoman Samantha Davidson. "If safety is ever in doubt, we won't hesitate to stop working and shut down a mining operation."

In central Appalachia, coal companies use impoundments to dispose of both "coarse refuse," or larger pieces of rock separated from coal during the cleaning process, and "fine refuse," or clay, silt and sand-size particles. Fine refuse is pumped in from the processing plant to the reservoir behind the coarse refuse. Over time, the "fines" are supposed to settle to the bottom, compressing and solidifying.

At Brushy Fork, the water that remains is pumped out.

When fully expanded, the impoundment will stretch 910 feet from the toe of the embankment to the crest, but Alpha says the vertical dimension from the natural surface to the top of the dam is 740 feet.

The vertical height of the Hoover Dam is 726 feet.

Once the impoundment reaches capacity, the remaining water will be drained, and it will be filled with coarse material, then graded and capped with soil and vegetation.

The West Virginia Department of Environmental Protection has previously ruled there was no reason to believe the impoundment was improperly built or that its contents could liquefy, triggering a failure. But the state also said it would require continued testing.

DEP spokeswoman Kathy Cosco said the agency is still reviewing Alpha's plan for the final stages, but the state needs MSHA approval before it can act. DEP has returned Marfork's application with some comments, so the timeline for state approval is uncertain.

The federal Office of Surface Mining Reclamation and Enforcement upheld the state's decision about the stability of Brushy Fork. But field director Roger Calhoun also said his agency had hired consultants to study it and six other impoundments, and the results could cause him to reopen the matter.

Rob Goodwin, who monitors slurry impoundments for Coal River Mountain Watch, sought the results of those studies under a Freedom of Information Act request.

But on March 15, the same day MSHA sent its letter to Alpha, the Office of Surface Mining denied Goodwin the documents. It cited two legal exemptions, calling the reports "interagency

or intra-agency memoranda." It also cited an exemption for records "compiled for law enforcement purposes."

Companies have been doing their own impoundment tests for years, Goodwin said, "and all the regulators have just been taking their word for it."

The studies would be the first independent assessment.

DEP Public Hearing on Aluminum Water Quality Standards Rule – March 27th

The West Virginia Department of Environmental Protection (DEP) Division of Water and Waste Management have scheduled a public hearing and comment period on emergency rule changes to 47CSR2, "Requirements Governing Water Quality Standards." The DEP proposes an emergency rule to revise the dissolved aluminum criteria and human health Category A beryllium criterion in 47CSR2.

The hearing will be held at DEP's Charleston headquarters, 601 57th Street S.E., Charleston, WV 25304, in the Coopers Rock Training Room on March 27th at 6:00 p.m. 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 R. Coyne
Water Quality Standards Program
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Comments may also be e-mailed to dep.comments@wv.gov. Comments will be made a part of the rulemaking record. Copies of the emergency rule and other rule documents are available from the Secretary of State's office or from the agency website www.dep.wv.gov/wqs. Hardcopies of this information may also be obtained by calling Kevin Coyne at (304) 926-0499, ext. 1110.

STAY TUNED: We will be sending out an ACTION ALERT early next week with more details.



Bills We Are Tracking

Bad Bills:

Coal Industry Bills:

* H.B. 2352, Clarifying that the West Virginia Department of Environmental Protection does not assume a mine operator's obligations or liabilities under the Water Pollution Control Act. Passed House EIL with amendment 3/20/13 to Judiciary.

* HB 2571 (same as SB 598), which would further weaken the conflict-of-interest provisions for members of the state Environmental Quality Board.

* HB 2579 (same as SB 472), which would delay efforts to force the coal industry to clean up its selenium pollution. Passed the House 99 - 0 on 3/08/13. Passed Senate EIM 3/12/13, to Senate Judiciary.

* HB 2597 (similar to SB 56), creating the Intrastate Coal and Use Act, which would eliminate federal oversight of coal mined and burned within the state. Passed House EIL with amendment 3/20/13 to Judiciary.

* SB 488 (similar to HB 2907), Relating to property crimes committed against coal mines and industrial facilities. Passed Senate EIM 3/19/13 to Senate Judiciary with weakening amendment.

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. Passed Senate Economic Development with amendment 3/13/13; passed Senate Finance 3/20/13 - with amendment removed; on first reading 3/21/13.

* HB 2590 (same as SB 342), which would create a "WV Land Stewardship Corporation" that could by-pass current brownfields law. Passed House EIL with amendment 3/13/13; passed House Judiciary 3/19/13 with amendments; on 1st reading, placed on Special Calendar 3/22/13. SB 342 passed Senate Economic Development on 3/20/13, to Gov Org.

* SB 185 (same as HB 2506), which would remove electric and hybrid-electric vehicles from eligibility for the alternatively fueled vehicle tax credit. Passed Senate Transportation 3/22/13 to Senate Finance with amendment restoring the tax credits for electric and hybrid-electric vehicles.

* SB 424 (same as HB 2826), DEP's bill terminating state's jurisdiction over certain surface mining operation sites.

Others:

* SB 98, creating the Shale Research, Education, Policy and Economic Development Center at WVU (Senate Education Committee).

* SB 449, Removing the ban on disposal of electronic devices in landfills. Passed Senate Gov Org 3/19/13, to Senate Judiciary.

Good Bills:

* SB 621, Requiring DHHR prepare public health impact assessment of any new air quality or water quality standards proposed by DEP (WVEC bill). (In Judiciary Committee).

* SB 158 (same as HB 2494), Creating the "Complete Streets Act". Passed Senate Transportation 3/12/13 with amendment; passed Senate Gov Org with amendment 3/20/13. On first reading 3/22/13.

* HB 2805 (same as SB 413), Making the Supreme Court Public Campaign Financing Act permanent. Passed House Judiciary 3/12/13, to House Finance

- * SB 551 (same as HB 2875), Continuing residential solar energy tax credits. Passed Economic Development 3/20/13 to Senate Finance.
- * SB 167, Creating the “West Virginia Future Fund”. (In Economic Development Committee).
- * SB 196, Partial Transfer of Management of Coopers Rock State Forest to DNR Parks from Division of Forestry. (In Natural Resources Committee).
- * HB 2152, Relating to “closed loop” systems for horizontal well drilling and fracturing. (In Judiciary Committee).
- * HB 2803, Requiring electric utilities to implement integrated resource plans (EEWV bill). (In House Gov Org Committee).
- * HB 2210, Relating to energy efficiency for utilities and their customers (EEWV bill). (In House Judiciary Committee).
- * HB 2200, EnergyStar tax credit for building or renovating buildings. (In House Finance Committee).

(NOTE: Numerous new bills were introduced in both houses on 3/21 and 3/22 and we will sort them out in our next *Legislative Update*).

Rules We Are Tracking

(NOTE: All of the DEP rules bills were bundled into one bill – SB 243 – on 3/21/13, and should be on first reading in the Senate on 3/22/13).

[35CSR8](#) (was SB 245), the DEP rule that implements the Horizontal Well Control Act, was passed out of Senate EIM 3/12/13 to Senate Judiciary, with an amendment weakening the “trade secrets” provisions for frac fluid contents contained in the proposed rule. Passed Judiciary on 3/19/13.

[33CSR12](#) (was SB 246), the DEP rule implementing the ban on disposing of “certain electronic devices” such as televisions and computers in landfills, was passed out of Senate Judiciary, with an amendment allowing more time for solid waste authorities to construct the buildings required under the rule.

[47CSR30](#) (was SB 249), DEP’s proposed WV NPDES Rule for Coal Mining Facilities, 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 rule was passed out of Senate EIM to Senate Judiciary on 3/05/13. Passed Judiciary 3/07/13.

[87CSR4](#) (SB 251), the Fire Commission rule updating the energy code within the state building code to the 2009 International Energy Code standards, was passed out of Senate Gov Org 2/27/13 to Senate Judiciary. Passed Judiciary.

[61CSR28](#) (SB 261), the Agriculture rule relating to poultry litter and manure movement into primary poultry breeder rearing areas, was passed out of Senate Agriculture 2/25/13; next passed out of Senate Finance 3/06/13 to Senate Judiciary. Passed Judiciary.

Calendar of Events

March 26: “From Buffalo Creek to Broadway” – A Visit with “Miracle Baby” Kerry Chad Alright. To be held at the WV Culture Center Theater, Charleston. From 7 p.m. till 9 p.m. Speakers: Kerry Chad Albright and Maria Gunnoe, organizer with OVEC. Film: Clips from Mimi Pickering of Appalshop’s *The Buffalo Creek Flood: An Act of Man.* This is a free event.

March 27: PUBLIC HEARING – Aluminum Water Quality Standards, Emergency Rule. To be held at DEP's Charleston headquarters, 601 57th Street S.E., Charleston – in the Coopers Rock Training room. 6:00 p.m. In addition to oral comments, the agency accepts written comments up to the conclusion of the public hearing. *See full notice in this newsletter.*

March 28: WV International Film Fest Benefit & Mixer. Sam's Uptown Bar, Charleston. From 5:30 – 8:30 PM. Stop by and pick up film schedules, and enjoy live music, refreshments. Suggested donation is \$8 or whatever you can afford.

April 13: Last day of 2013 regular legislative session.

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

April 20: Greenbrier County's Sustainability Fair. To be held at the Community Center – the Clifford Armory. Eco-Community Plan revealed, plus plans for creating a greener future. Groups from around the state invited to participate. Sponsored by, Main Street Ronceverte. For more information: mainstreetroncovertepres@gmail.com

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

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

(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](http://www.wvcag.org)

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

WVU 50/50 Solar Decathlon Challenge / Fundraiser

Our WVEC / WVU 50/50 Fundraising effort continues: WVU students entered and qualified for the U.S. Department of Energy Solar Decathlon Challenge and will be going to Orange County California October 3-13th. Groundbreaking for the project on campus is April 18th at 10 AM - the public is invited to attend. Half of the funds raised through WVEC during this time **designated** for our **50/50 challenge** go in support of the **WVU Solar Decathlon Challenge**, and half go in support of **WVEC**.

To learn more: www.wvecouncil.org – follow link at the top of front page. Mountain View Solar: www.mtvsolar.com

I'd like to donate to the 50/50 WVU Solar Decathlon Challenge in the amount of:

\$ _____

(Make checks payable to WVEC - be sure to note the 50/50 challenge. 1/2 of this donation is tax-deductible).

Name & Address: _____

Support the West Virginia Environmental Council

P.O. Box 1007, Charleston WV 25324

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

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WVEC Legislative Update Newsletter

March 22, 2013