



*West Virginia Environmental Council's*

# GREEN Legislative Update

*Published Weekly during West Virginia's Legislative Session*

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**Reminder:** This will be the last *Green Legislative Update* newsletter until after the conclusion of the session. We will continue to send out alerts and notices as necessary. Look for our *Green Legislative Wrap Up* newsletter in late April.

## Under the Dome

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

### Week 8 – Final Week

Counting today, this Legislature will meet for only seven more days.

That may give you cause to jump up and shout, “Hooray!!”

But for the WVEC lobby team, the seven days remaining are going to be grueling.

Almost all of the numerous bad bills we have been trying to fend off are still alive. For example, the “selenium bill” (HB 2579) – which would delay efforts to force the coal industry to clean up its selenium pollution – will be taken up in Senate Judiciary Committee this week. It passed the House on a 99 - 0 vote almost a month ago!

Most of the “coal industry” bills are also sitting in Senate Judiciary. That’s also where HB 2805 (making the Supreme Court Public Campaign Financing Act permanent) is sitting. It passed the House yesterday on a 70 – 29 vote. You can see the roll call vote here:  
<http://www.legis.state.wv.us/legisdocs/2013/RS/votes/house/00172.pdf>

On the House side, we are focused on the DEP rules bundle (SB 243), which contains the Horizontal Well Control Act rule. The rule was passed out of the Senate with a terrible amendment weakening the “trade secrets” provisions for fracturing fluid contents. House Judiciary Committee will take up the rule next week.

On a positive note, SB 158, creating the “Complete Streets Act”, passed out of House Government Organization committee yesterday. It should be on first reading in the full House

today. "The purpose of this bill is to insure that streets are safe, efficient and convenient for travel by all users, including pedestrians, bicyclists, motorists and transit riders, in the policies, design guidance, planning, development, construction and maintenance of roads in this state."

While this bill doesn't go as far as we would have liked, it's a good start.

So, with almost everything still in play, the lobbyists for coal and oil and gas are everywhere – at "the well" and in the hallways and back rooms.

We're there, too. It's going to be a long final week.

Warmer weather is ahead, so keep your bird feeders full and enjoy the show. It can help you keep calm.

## **When Trade Secrets Are Dirty Fracking Chemicals Shouldn't Be Kept Secret**

*By Chuck Wyrstok*

*WV Chapter, Sierra Club*

**CHARLESTON GAZETTE Op Ed:** April 5, 2013

When does a trade secret become dangerous to your health? One answer: when it is secret drilling chemicals spilling onto well sites, roads and waterways and endangering you by crippling your doctor's ability to treat you.

The original intent of West Virginia's Marcellus Act of 2011 had been to require drilling companies to disclose to state regulators all the ingredients in hydraulic fracturing chemicals. The goal was to help the regulators track the source of any groundwater contamination that might occur at or near a drilling site.

But one huge out-of-state corporation has convinced our Department of Environmental Protection and our legislators that's it's OK to let companies keep toxic, carcinogenic hydraulic fracturing fluid chemicals a secret. Benzene, sodium hydroxide, ethylene glycol, hydrochloric acid, glutaraldehyde, acetaldehyde, polyacrylamide, and hundreds more. Not to worry.

Drilling companies always say their secret chemicals are safe. But keeping it secret makes it impossible for anyone else to check. That is why the Legislature mandated release of that information in the original legislation.

Halliburton, the giant company that pushed the state DEP and some state senators to insert this secrecy amendment, contends that specific formulations of certain fracking fluids are closely guarded corporate secrets. Human beings living on the land in West Virginia might contend that clean water is a closely guarded human right.

But the "Dirty Secrets" amendment, now leaving the state Senate and heading for the House of Delegates as part of SB243, guts the original disclosure provisions, leaving land owners in the dark and potentially endangering first responders, doctors and hospital staff, not to mention injured workers.

Public knowledge of the chemicals can help landowners near gas drilling projects know what types of pollution to test for in their groundwater. Such testing targeted for certain chemicals can be done before or while drilling occurs and can help to establish the well water, at that point, is not polluted by those chemicals. Incidentally, we're talking about 25,000 gallons of chemicals per gas well!

The Halliburton loophole -- oops, sorry, the "amendment" -- says the driller may designate the identity of a chemical as a trade secret, not to be shared with the DEP except in the case of a DEP investigation or a medical emergency. How might that emergency play out?

Let's say guys are working on a rig at 1 a.m. There's an accident and they're injured by unknown chemicals. Shouldn't everyone from the first responder to the emergency room know what they're dealing with? Does anyone know? Would they be endangered by a lack of immediate disclosure? How would the injured get timely medical attention? Currently, DEP's rules require that Material Safety Data Sheets for chemicals used on a well site be readily available and maintained at the well site. However, studies in Colorado have shown that the information provided on MSDS sheets is incomplete and not reliable.

On top of all this, they want to clamp a gag order on doctors. Health professionals who obtain the trade secret information would have to sign a confidentiality agreement and provide a written statement of need! So, a doctor who knows of an exposure wouldn't be allowed to tell other patients, fellow workers or the neighbor next door.

Clean water, good medical treatment. Basic human rights? Maybe. Maybe not. After all, big corporate needs have pretty much gotten the nod in West Virginia. Nothing new.

But my eighth grade civics class taught me that elected representatives, since they are "hired" by us to represent our interests, would protect us from corporations that threaten us with this type of secrecy.

What does it say about us if we let our legislators put us in danger? What does it say about them if they go ahead and do it?

It seems people need to force government to protect them. Otherwise, people will not be protected. The Legislature must guarantee the right of citizens to know about chemicals to which they are exposed. SB243, dirty secrets amendment attached, is being considered by the House of Delegates. Tell your delegates and senators to protect us.

<http://www.wvgazette.com/Opinion/OpEdCommentaries/201304040080>



**TAKE ACTION!**

# The Halliburton “Dirty Secrets” amendment must be stricken from the DEP Horizontal Well Control Act Rule

**PLEASE CONTACT MEMBERS OF HOUSE JUDICIARY TODAY.**

The **DEP RULES Bundle (SB 243)** may be on their agenda **Monday**. The “Halliburton” amendment adopted by the Senate Energy, Industry & Mining (EIM) Committee weakens the “trade secrets” provisions proposed in the original rule. It guts the original disclosure provisions leaving land owners in the dark and potentially endangering first responders, doctors and hospital staff, not to mention injured workers or residents.

**Ask House Judiciary Committee members to protect the public by removing the “Halliburton” / EIM amendment from the rule.**

(House Judiciary contact information below.)

**Background:** The originally proposed version of the rule, **approved by the Rulemaking Review Committee**, required the driller or its contractor to **disclose to the DEP all** of the additives and **all** of the chemicals in each additive, **plus the concentrations** of the chemicals in the additives and in the finally mixed hydraulic fracturing fluid.

**The amendment adopted by EIM, at the “urging” of the Halliburton Company, allows operators and their service providers to keep not only the concentrations of additives secret, but also the identity of specific chemicals in those additives**

Public knowledge of the chemicals can help landowners near gas drilling projects know what types of pollution to test for in their groundwater. Such testing targeted at certain chemicals can be done before or while drilling occurs and help to establish that well water, at that point, is not polluted by those chemicals.

As if that’s not enough, they want to clamp a gag order on doctors. **The amendment requires health care providers to sign confidentiality agreements and provide a “written statement of need” in order to obtain information about the identity or concentration of a chemical designated as a confidential trade secret.** So, a doctor who knows of an exposure wouldn’t be allowed to tell other patients, fellow health care providers, or the neighbor next door.

**These changes endanger HUMAN HEALTH and THE ENVIRONMENT!**

**Ask members of House Judiciary Committee to return the Rule to its original version. (Hint: Phone calls carry more weight than email messages).**

**House Judiciary Committee:**

Tim Miley, Chair – (304) 340-3252 – [tim.miley@wvhouse.gov](mailto:tim.miley@wvhouse.gov)

Tim Manchin, Vice Chair – (304) 340-3392 – [tmanchin@manchininjurylaw.com](mailto:tmanchin@manchininjurylaw.com)

John Ellem (R-Wood), Minority Chair – (304) 340-3394 – [john.ellem@wvhouse.gov](mailto:john.ellem@wvhouse.gov)

Patrick Lane (R-Kanawha), Minority Vice Chair – (304) 340-3275 – [Patrick.lane@wvhouse.gov](mailto:Patrick.lane@wvhouse.gov)

Michael Ferro (D-Marshall) – (304) 340-3111 – [mike.ferro@wvhouse.gov](mailto:mike.ferro@wvhouse.gov)

Barbara Fleischauer (D-Monongalia) – (304) 340-3169 – [barbaraf@wvhouse.gov](mailto:barbaraf@wvhouse.gov)

Cindy Frich (R-Monongalia) – (304) 340-3125 – [cindy.frich@wvhouse.gov](mailto:cindy.frich@wvhouse.gov)

Eric Householder (R-Berkeley) – (304) 340-3274 – [eric.householder@wvhouse.gov](mailto:eric.householder@wvhouse.gov)  
Bill Hamilton (R-Upshur) – (304) 340-3167 – [bill.hamilton@wvhouse.gov](mailto:bill.hamilton@wvhouse.gov)  
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Lynwood “Woody” Ireland (R-Ritchie) – (304) 340-3195 – [woody.ireland@wvhouse.gov](mailto:woody.ireland@wvhouse.gov)  
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Mike Manypenny (D-Taylor) – (304) 340-3139 – [mike.manypenny@wvhouse.gov](mailto:mike.manypenny@wvhouse.gov)  
Justin J. Marcum (D-Mingo) – (304) 340-3126 – [justin.marcum@wvhouse.gov](mailto:justin.marcum@wvhouse.gov)  
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Stephen Skinner (D-Jefferson) – (304) 340-3248 – [Stephen.skinner@wvhouse.gov](mailto:Stephen.skinner@wvhouse.gov)  
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Isaac Sponaugle (D-Pendleton) – (304) 340-3154 – [Isaac.sponaugle@wvhouse.gov](mailto:Isaac.sponaugle@wvhouse.gov)  
Danny Wells (D-Kanawha) – (304) 340-3287 – [danny.wells@wvhouse.gov](mailto:danny.wells@wvhouse.gov)

## **Bills That Have Died**

- 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. Died in House Judiciary.
- SB 629, Limiting liability of landowners, operators and contractors in water pollution abatement projects. Passed Senate EIM 3/26/13 to Senate Judiciary. Died in Senate Judiciary.
- SB 424 (same as HB 2826), DEP’s bill terminating state’s jurisdiction over certain surface mining operation sites. Both bills died in committee.
- SB 449, Removing the ban on disposal of electronic devices in landfills. Passed Senate Gov Org 3/19/13, to Senate Judiciary. Died in committee.
- HB 3148, Creating the "ATV and UTV Recreation Act", the bill would allow ATV use on all public lands. To Roads and Transportation; died in committee 3/27/13.
- SB 621 (same as HB 3089), Requiring DHHR prepare public health impact assessment of any new air quality or water quality standards proposed by DEP (WVEC bill). Died in committee.
- SB 551 (same as HB 2875), Continuing residential solar energy tax credits. Passed Economic Development 3/20/13 to Senate Finance. Both bills died in committee.
- SB 167, Creating the “West Virginia Future Fund”. Passed Economic Development with committee substitute, placed on second reading to Finance 3/27/13. Died in committee.

- SB 196, Partial Transfer of Management of Coopers Rock State Forest to DNR Parks from Division of Forestry. Died in committee.
- HB 2152, Relating to “closed loop” systems for horizontal well drilling and fracturing. Died in committee.
- HB 2803, Requiring electric utilities to implement integrated resource plans (EEWV bill). On 3/29/13 House Judiciary amended this bill with a strike and insert amendment into HB 2176. The bill died on an 11 – 11 committee vote.
- HB 2210, Relating to energy efficiency for utilities and their customers (EEWV bill). Died in committee.
- HB 2200, EnergyStar tax credit for building or renovating buildings. Died in committee.

## **Bills We Are Tracking That Are Still Active**

### **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 to Senate Judiciary, then Senate Finance 4/04/13.
- HB 2571 (same as SB 598), which would further weaken the conflict-of-interest provisions for members of the state Environmental Quality Board. Passed Gov Org with committee substitute 3/27/13. Passed House 4/02/13 to Senate Gov Org, then Judiciary.
- 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 with amendment 3/13/13, to Senate 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; Judiciary passed committee substitute 3/26/13. Passed Senate to House Judiciary 4/01/13.
- HB 3072, West Virginia Coal Employment Enhancement Act. Provides significant tax credit to coal producers who sell coal to taxpayers who increase their consumption of West Virginia coal. Passed House EIL, then House Finance. Passed House to Senate EIM, then Finance 4/04/13.

### **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. Passed Senate to House Judiciary 3/27/13.

- 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. Passed House to Senate Gov Org 3/27/13.
- 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. Passed Senate Finance 3/26/13, with amendment removed. Passed Senate 4/02/13, to House Finance.

#### **Others:**

- SB 98, creating the Shale Research, Education, Policy and Economic Development Center at WVU (Senate Education Committee). Committee substitute passed Education to Finance 3/26/13. Passed Finance 3/28/13. Passed Senate to House Education 4/03/13.
- HB 3060, Authorizing the Oil and Gas Conservation Commission to regulate horizontal deep well spacing. Passed House to Senate EIM, then Judiciary 4/04/13.

#### **Good Bills:**

- 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. Passed Senate to House Gov Org 3/27/13. Passed House Gov Org 4/04/13.
- HB 2805 (similar to SB 413), Making the Supreme Court Public Campaign Financing Act permanent. Passed House Judiciary 3/12/13, passed House Finance 3/29/13. Passed House to Senate Judiciary 4/04/13.

## **Rules We Are Tracking**

[35CSR8](#) (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. On 3/21/13 all of the DEP rules bills were bundled into one bill – SB 243. The bill passed the Senate on 3/27/13, and referred to House Judiciary on 3/28/13.

[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. Meanwhile, the House took up its version of the rule, HB 2660. It passed out of House Gov Org, then Judiciary, and was bundled into HB 2626. Passed House to Senate Judiciary 4/02/13.

[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. Meanwhile, the House took up its version of the rule, HB 2645. It passed out of House Finance, then out of House Judiciary, and was bundled into HB 2689. Passed House to Senate Judiciary 4/04/13.

## Calendar of Events

**April 6:** Water Quality Monitoring Workshop. From 11 a.m. – 4 p.m. Weston, Lewis County, WV. At the boat launch at Sycamore Lick Road. The boat launch is just before the entrance to Jackson's Mill outside of Weston, Lewis County. Bring rubber boots if you've got 'em. Please RSVP Kara Vaneck, AmeriCorps VISTA - WVU Small Farms Center at [304-940-1928](tel:304-940-1928) or [karavaneck@gmail.com](mailto:karavaneck@gmail.com)

**April 8:** Discussion On Health & Surface Mining with Dr. Michael Hendryx. (Second community forum of the coalfield Environmental Health Project). To be held at the Historic Oak Hill School, 140 School Street, Oak Hill, WV. 6 p.m. Free and open to the public. Sponsored by, the Southern Appalachian Labor School and the Plateau Action Network.

**April 8:** Film Screening – documentary on Hunger - “A Place at the Table”. Culture Center, Charleston. Begins at 6 p.m. Panel discussion to follow featuring film director Lori Silverbush and food expert Dr. Janet Poppendieck. For more information: Paul Sheridan, [paul.sheridan@wvsenate.gov](mailto:paul.sheridan@wvsenate.gov) or (304) 357-4490. Hosted by, WV Legislature.

**April 12-20:** WV International Film Festival ~ “Love Springs Eternal”. WVSU Capitol Center Theater, 123 Summers Street, Charleston. Admission: \$8 per film; Students \$5; Six pack bundle \$30. Some opening films held at other locations – visit website for complete details, list and times for films: [www.wviff.org](http://www.wviff.org)

**April 13:** Last day of 2013 regular legislative session.

**April 15:** The WV International Film Festival honors the late WV film pioneer Robert (Bob) Gates. WVSU Capitol Center Theater, 123 Summers Street, Charleston. 6:00 p.m. and 10:00 p.m. “In Memory of the Land and People”, Morris Family Old Time Music Festival”, “Mucked”, “Communication from Weber”, “Twelve Tall Stacks” will be screened. Suggested donation: \$8.

**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](http://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](mailto:mainstreetroncovertepres@gmail.com)

**April 20:** 8<sup>th</sup> Annual Earth Day Celebration – Appalachian Folklife Center, Pipestem WV. From 11 a.m. till 11 p.m. Music, Art & Activism. Free admission. In cooperation with LLynium Entertainment. For more schedule & information: [www.folklifecenter.org](http://www.folklifecenter.org) or (304) 320-8833.

**April 20-21:** Tree Planting – Red Spruce Ecosystem Restoration. Canaan Valley National Wildlife Refuge. Meet at the Refuge Headquarters & Visitor Center at 9 a.m. each day. Come dressed for the weather (sturdy shoes or boots & bring gloves). Lunch provided. Please RSVP! For more information: [www.restoreredspruce.org](http://www.restoreredspruce.org) or contact Dave Saville: [daves@labyrinth.net](mailto:daves@labyrinth.net) or (304) 692-8118.

**April 22:** Earth Day

**April 25:** PUBLIC MEETING for Underground Injection Control Well on Frank’s Run. 6:00 p.m. - Doddridge County High School. For more information: Christina Woods [mchrisw40@aol.com](mailto:mchrisw40@aol.com)

**May 22:** Energy Efficiency in West Virginia Conference. Marshall University ~ Foundation Hall, Huntington WV. 8:30 a.m. – 3:30 p.m. Speakers include experts from various state and government agencies, private organizations and academic institutions. For more information and registration: [www.ohvec.org](http://www.ohvec.org)

**June 29-30: (Save the date) - Wellness and Water II: Health Impacts of Fossil Fuel Extraction Conference**. To be held at WV Wesleyan College, Buckhannon WV. To include speakers and workshops related to both coal and gas affected communities. Overnight housing and meals will be available. *More detailed information available soon.*

**October:** WVEC Annual Fall Conference. To be announced – please stay tuned.

▶ To have your event posted, please contact Denise Poole: [deniseap@earthlink.net](mailto: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](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:** <http://ohvec.org/news.php>

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

**WV Citizen Action Group:** <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](mailto: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 3-13<sup>th</sup>. Groundbreaking for the project on campus is April 18<sup>th</sup> 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](http://www.wvecouncil.org) – follow link at the top of front page. Mountain View Solar: [www.mtvsolar.com](http://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: \_\_\_\_\_

\_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone: \_\_\_\_\_

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**Support the West Virginia Environmental Council**

P.O. Box 1007, Charleston WV 25324

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

\_\_\_\_\_ Membership          \_\_\_\_\_ Change of Address          \_\_\_\_\_ Donation

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