



West Virginia Environmental Council's

GREEN Legislative Update

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Under the Dome

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

Week 6 – *You're Exempt!*

Way back around 1999 we printed up some “*Certificates of Exemption*” on bright fluorescent paper and handed them out to industry lobbyists around the rotunda.

Those certificates granted all the extractive industries a “*license to pollute*,” because they were exempt from the anti-degradation water implementation rules being considered at the time.

We could use some of those certificates again this year.

In fact, there are so many exemptions contained in SB 373, the Aboveground Storage Tank Act that it is difficult to find a tank to which the Act would apply.

Last Thursday House Judiciary Chairman Tim Manchin (D-Marion) hauled DEP officials before the Committee to explain the long list of exemptions. There are more than 20 types of tanks excluded in the bill.

The bill, passed two weeks ago by the Senate, exempts a slew of aboveground tanks from its regulations, including: those holding just water; tanks on farms; tanks with 1,100 gallons or less of motor fuel; tanks with 1,100 gallons or less of heating oil; some propane tanks; some tanks storing wastewater; some septic tanks; tanks inside a building not sitting on an impermeable floor; ponds; tanks used to store fluids that are gases at standard temperatures or pressure; and others.

There are exemptions that would protect chemical storage tanks at coal mines and natural gas production sites from permitting and inspections required by the new bill.

However, Lewis Halstead, a deputy director of the DEP Division of Mining and Reclamation, told lawmakers that his agency does not test the structural integrity of chemical storage tanks -- including those at preparation plants that might contain coal-cleaning chemicals such as Crude MCHM.

And James Martin, director of the DEP's Office of Oil and Gas, said his agency likewise doesn't do tank integrity testing -- and isn't required to conduct periodical natural gas site inspections. Martin was also unable to explain another exemption for "liquid traps or associated gathering lines related to oil or gas production and gathering operations."

Robert Williams, a Judiciary staff attorney, told the Committee, "After you go through all the exceptions, it's really unclear what's left to be regulated."

Delegate Stephen Skinner (D-Jefferson) commented to the Committee that "it's clear there are some unnecessary exemptions in the bill."

And Delegate Barbara Fleischauer (D-Monongalia) suggested that perhaps lawmakers should strip the exemptions from the bill. The DEP could conduct its inventory first, Fleischauer said, and lawmakers could allow the agency to write exemptions later, based on what the inventory shows.

In an interview with *Charleston Gazette* reporter Ken Ward on Friday, DEP Cabinet Secretary Randy Huffman said his agency needs more authority over all aboveground chemical storage tanks in the state -- regardless of whether the tanks are covered by industry-proposed exemptions in SB 373.

Huffman said he hopes lawmakers will amend the bill to give the DEP authority to make all storage tanks comply with structural-integrity standards the agency will design.

"It doesn't do any good to exempt the tanks from having to meet the integrity standards if the tanks pose the same kinds of risks as the tanks at Freedom Industries," Huffman said in the interview.

Remember to keep those birdfeeders full next week. You are not exempt!



Public Hearing on Landfill/Drill Cuttings Bill – Monday at 5:00 PM

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

There will be a public hearing on HB 4411 Monday, February 17 at 5:00 PM in the House Chamber.

HB 4411 is the House bill that will allow unlimited amounts of gas well drill cuttings and drilling mud to be dumped in any WV commercial solid waste landfill and exceed the legally established tonnage caps for those landfills.

The one bright spot in the bill as drafted is that any solid waste facility taking drill cuttings and drilling waste must install radiation monitors, and the Secretary of DEP “must promulgate emergency and legislative rules to, at a minimum, establish a radiation limit and establish the procedures the facility must follow if that limit is exceeded.” However, under the bill, the facilities have until January 1, 2015, to comply.

This bill is DEP and industry backed legislation. DEP does not know what else to do with this huge new waste stream. The original versions of HB 4411 and SB 474 (a “same as” bill in the Senate) did not contain the monitoring provisions, until we complained that Secretary Huffman had publicly agreed to include them.

There are a couple of new bills, SB 591 and SB 594, that address the issue in a different way. We are looking at those now.

WVEC will be testifying at the public hearing and asking:

Require separate new landfills just for this waste.

Require the drilling companies to pay for the construction and operation of these landfills, as well as tipping fees to be used for the benefit of the state and communities.

Require installation of the radiation monitors within six months of bill passage.



E-Day! At the Capitol

Monday, February 17, 2014

“Water Is Life – Keep It Clean”

Upper Rotunda, Senate Hallway ~ From 9 AM – 3 PM

- ▶ CITIZEN LOBBYING ▶ DISPLAYS ▶ DAY OF ACTION
- ▶ PRESS CONFERENCE (12:30 / Lower Rotunda) ▶ MUSIC
- ▶ PUBLIC HEARING at 5:00 PM on HB 4411

DISPLAYS 9 AM – 3 PM:

- WV Environmental Council ● Sierra Club, WV Chapter
- WV Highlands Conservancy ● Greenbrier River Watershed Association
- WV Rivers Coalition ● WV Citizen Action Group / WV-CAG
- Energy Efficient WV ● WV Surface Owners' Rights Org. / SORO
- Friends of the Cheat ● The Mountain Party ● WV Wilderness 50
- Friends of Blackwater Canyon ● WV Free
- WV 350 Reversing Climate Change
- Ohio Valley Environmental Coalition / OVEC
- Friends of Deckers Creek ● Aurora Lights ● WV Citizens Climate Lobby

● Sending out an SOS! -“Message in a Bottle” SOS Water Display

Asking for more in home testing and emphasizing that we want ALL our water protected. Bring a SMALL bottle of your tap water - write the date you filled it & the location. Add a message. Or, simply bring an empty bottle with your message inside. Place it on our SOS Display table by the Robert C. Byrd statue between 9 AM and 12 Noon. (Include your name – and please pick it up before you leave).

● A Proclamation will be delivered to Governor Tomblin in the afternoon

(Stop by the Citizen Lobby table by the Robert C. Byrd statue for full agenda, actions, and more happenings during E-Day!)

See you on E-Day!



E-Day!

Benefit Dinner & Awards Ceremony

**Women's Club of Charleston – Corner of Elizabeth St. & Virginia Ave.
From 6:00 PM till 9:00 PM**

•Donation of \$15 per person •Cash donation bar

•**Music provided by, Marium Bria & Ammed Solomon; Performance by Jude Binder – accompanied by Andy Park. Poetry reading by, Crystal Good.**

Menu: Pasta, Middle Eastern (vegetarian, vegan & meat based), Variety of homemade soups, Fresh green salad, Fresh bread, Desserts, Drinks.

Program & Award Presentations: 7:15 – 8:00 PM

Awards Bestowed to:

Kevin Smith (*posthumously*) – Mother Jones

Evan Hansen – Don Gasper Science in the Public Interest

Angie Rosser – Linda Schnautz Environmental Courage

Karan Ireland – Laura Forman Grassroots Activist

WV Environmental Council ~ P.O. Box 1007 Charleston WV 25324 ~ www.wvecouncil.org

Weekly Statehouse Aquapocalypse Update

By Vickie Wolfe
WVEC Lobbyist

On Monday, the House Health and Human Resources Committee continued to hear water crisis-related testimony from public health officials.

On Tuesday, Governor Tomblin announced the commencement of a study called the West Virginia Testing Assessment Project (WVTAP), which will conduct testing in some homes affected by the January 9 Elk River spill. The study will also attempt to ascertain the odor threshold for crude MCHM.

On Wednesday morning, the Legislative Oversight Committee on State Water Resources heard testimony from Rich Ireland, Regional Sales Manager of Rosemount Tank Gauging. Mr. Ireland informed the commission about American Petroleum Institute (API) standards for above-ground storage tanks. Dr. Letitia Tierney,

Commissioner of the Bureau for Public Health, was also interviewed by Commission members.

But the real fun began on Wednesday evening, when the House Health and Human Resources Committee took up S. B. 373, which creates a program for regulating above-ground storage tanks.

The Committee had made a number of revisions to the version of the bill that was passed by the Senate a couple of weeks ago. The revised bill begins with a section on public health. "Zones of critical concern" (ZCCs) for public water supplies are defined. By July 1, 2016, public water utilities are required to submit source water protection plans, and the contents of these plans are specified.

The revised bill ends with a section called "The Public Water Supply Protection Act" which requires the DEP to "compile an inventory of all potential significant contaminant sources contained within a public water system's zone of critical concern" and to provide a copy of the list of contaminants in each ZCC to the affected public water system and others. It also prohibits the use of "general" NPDES permits by permittees within ZCCs, requiring instead that NPDES permits in ZCCs must be individual.

The Committee spent four hours discussing and voting on proposed amendments. The most significant amendment that was adopted would require all public water systems in West Virginia to install either a second intake or capacity for five days' storage. Around 10:20 p.m. the bill was passed out of the HHR committee unanimously and moved on to its next destination, the House Judiciary Committee.

Finally on Thursday afternoon, House Judiciary spent a couple of hours questioning DEP officials about SB 373's long list of exemptions. Delegate Barbara Fleischauer proposed (logically!) that perhaps the exemptions should be stripped from the bill and that the DEP could write appropriate exemptions after having compiled the bill's mandated inventory.

We'll leave you with a few compelling quotes from *Gazette* and *Daily Mail* reports of the Judiciary meeting:

By Kristin Boggs, DEP General Counsel:

"We're happy to explain what these exemptions mean. We aren't here to defend the exemptions." (*Gazette*)

"Absent this type of event happening, my fear is if we'd have brought it over here, we'd have been screamed out of the Capitol - 'mission creep, DEP power grab, trying to over regulate,' "

"I mean, we're sort of in a Catch-22 position. Because when we try to be proactive, we're being anti-business, and when we're reactive, we're not doing enough." (*Daily Mail*)

And by Delegate Stephen Skinner, D-Jefferson:

"Why would that have happen? Why is the culture of West Virginia such that we can't get something really smart done except after we poison people?" (*Daily Mail*)

Aquapocalypse II

In case you haven't heard, on Tuesday we had a second "aquapocalypse" of a sort, when more than 100,000 gallons of coal slurry from Patriot Coal's Kanawha Eagle operation spilled into Fields Creek, and a portion of it flowed into the Kanawha River near Chesapeake.



In the *Gazette's* report, DEP Secretary Randy Huffman said, "This is a big deal, this is a significant slurry spill When this much coal slurry goes into the stream, it wipes the stream out." In contrast, Jimmy Gianato, director of the division of Homeland Security and Emergency Management said (according to the *Gazette*) "I don't think there's really anything to it .

. . . It turned out to be much of nothing." (As long as you're not a crayfish, frog, mayfly, etc., I guess.)

Worth The Read

West Virginia Water After The Spill: 'We do not drink it. My pets do not drink it'
<http://www.theguardian.com/world/2014/feb/14/west-virginia-after-the-spill-residents-still-feeling-chemical-leaks-effects>

William Rivers Pitt | The Poisoner's Reckoning
<http://truth-out.org/opinion/item/21835-william-rivers-pitt-the-poisoners-reckoning>

The Tell-Tale Heart of Chemical Valley by Cheyenna Layne Weber
<http://www.blunderbusmag.com/the-tell-tale-heart-of-chemical-valley/>

Coal Prep Plant Waste Hits WV Stream – Great Photos by Vivian Stockman
<http://www.flickr.com/photos/88388404@N03/sets/72157640855453525/>

Jim Kotcon, Gazette Op Ed: How To Trust The Water
<http://www.wvgazette.com/Opinion/OpEdCommentaries/201402070175>

Bill Hughes, Gazette Op Ed: Tyler County Also Dealing With Contamination
<http://www.wvgazette.com/Opinion/OpEdCommentaries/201402070171>

Calendar of Events

February 17: WV Environmental Council's Annual "E-Day at the Capitol" – 'Water Is Life – Keep it Clean'. **A Day of Action & Citizen Lobbying.** WV State Capitol - Senate hallway, Upper Rotunda & alcoves. From 9:00 a.m. – 3:00 p.m. ► **Press Conference** in the Lower Rotunda at 12:30. Environmental Groups / Organizations / Sustainable Businesses, Citizen Lobbying will be located in Upper Rotunda alcoves & Senate Side Hallway. For more information, call the WVEC office: (304) 414-0143 or deniseap@earthlink.net

February 17: WV Environmental Council's Annual "E-Day Benefit Dinner & Awards Ceremony". Woman's Club of Charleston. 6:00 p.m. – 9:00 p.m. Buffet dinner, music by Marium Bria & Ammed Solomon, Poetry by Crystal Good, performance piece by Jude Binder – accompanied by Andy Park. Awards bestowed at 7:15 p.m. Donation of \$15 per person at the door. Cash donation bar. Proceeds go in support of the WV Environmental Council's lobbying efforts. For more information: deniseap@earthlink.net

February 20: Water Unites Us. Panel of Experts regarding recent water crisis. Marshall University, Huntington WV. To be held in the Shawkey Room (in the Student Center). From 7 PM – 9 PM. This event is to provide information about the recent water crisis, to allow citizens to ask questions of experts, and to inform citizens about actions they can take to resolve the current crisis and prevent future problems. Sponsoring Groups: OVEC, WV Highlands Conservancy; MU Student Environmental Action Coalition; MU Students for Appalachian Socialism. Speakers: Maya Nye, People Concerned About Chemical Safety; Evan Hansen, Downstream Strategies; Cathy Kunkel, Energy Efficient WV; and Andrew J. Whelton, Ph.D., Associate Professor Environmental Engineering with the University of Southern Alabama.

February 24: WVU Law National Energy Conference 2014. Erickson Alumni Center, WVU. This is a free, one-day conference. Features speakers from air and energy regulatory agencies, electric utilities, energy producers, academic institutions, environmental groups, and public policy organizations to explore legal, policy, economic, and other issues surrounding the new rules, including:
EPA's rule-making process and the likely framework of the EPA rules.
Options available to states for complying with the EPA rules.
Options available to utilities and other energy producers for complying with the EPA rules.
Socio-economic implications for coal dependent states.
Flexibility and the Path Forward for Coal Dependent States

Coal fired power plants supply approximately 40 percent of the electricity generated in the United States, but also contribute 80 percent of the power sector's carbon dioxide (CO₂) emissions.

In June 2013 President Obama directed EPA to complete CO₂ emission standards for new and existing power plants by June 1, 2015. In September, 2013 EPA proposed standards for new power plants under Section 111(b) of the Clean Air Act. In June 2014, EPA is expected to propose standards and guidelines for existing power plants under Section 111(d) of the Clean Air Act, which will become effective one year later, in June 2015.

Major coal producing regions of the country and states served by electric utilities relying heavily on coal fired generation potentially will bear disproportionate adverse impacts from the EPA's regulation of CO₂ emissions. At the same time, EPA's rules are expected to provide a number of compliance options for states in achieving the CO₂ emission standards. This conference will examine pending EPA regulation under section 111(d) of the Clean Air Act and explore the policy frameworks available to states for developing CO₂ emission reduction strategies for existing power plants.

Panelists will discuss compliance options likely to be made available to states, potential impacts on the power sector as well as the broader economic implications of the EPA regulations for coal-producing regions.

U.S. Senator **Joe Manchin** (D-W.Va.) has been invited to give the keynote address.

The luncheon speaker will be **Charles Patton**, President and Chief Operating Officer of Appalachian Power. PRESENTED BY STEPTOE & JOHNSON PLLC

Feb 27 - March 1: Dimensions of Political Ecology Conference. To be held at the University of Kentucky, Lexington.

For more information: www.politicaecology.org

March 9 – 16: Mountain Justice Spring Break. North central West Virginia - focused on coal and fracking issues, beautiful location, camping and indoor lodging, all food and programs provided for low cost alternative spring break.

For more information: www.mjsb.org

March 22: WVEC Board of Directors meeting. TBA

June: WVEC Board of Directors June Retreat. TBA

June 21 & 22: 9th Annual Lavender Fair. To be held at the beautiful LaPaix Herb Farm, Alum Bridge WV. Theme: "Choose Love". Tracks: 1) Honoring the Earth. 2) We Are All Connected. 3) Just Herbs. This is a very popular event, so please register early to ensure attendance. Car pooling is encouraged.

Reservations are limited to 100 per day. Cost: \$50 per day per person. Includes gourmet luncheon.

For more information: www.lapaixherbfarm.com

Fall 2014: 25th Annual WVEC Fall Conference! Join us as we celebrate **25 years** of protecting West Virginia's environment and being your voice at the WV state capitol! Exact location and plans TBA. Stay tuned!

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

Legislative Session 2014 Information Sources:

Legislative Reference & Information Center:

MB-27, Bld. 1 - State Capitol Complex, Charleston WV 25305

WV Legislative web-site: www.legis.state.wv.us

(For bill tracking, bulletin board (journals), legislators' e-mails.)

To Call Toll Free: 1-877-565-3447 or local Charleston area: (304) 347-4836

Listen Live: West Virginia Legislature page <http://www.legis.state.wv.us/> and click on "listen live.

WV Environmental Council Web-site: www.wvecouncil.org

WVEC Office: (304) 414-0143

Ohio Valley Environmental Coalition: <http://ohvec.org/news.php>

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

WV Citizen Action Group: <http://www.wvcag.org>

WV –CAG Office: (304) 346-5891

Legislative Update is published by the West Virginia Environmental Council (WVEC) – a statewide organization dedicated to facilitating communication and cooperation among citizens in promoting environmental protection in West Virginia. *Legislative Update* is published weekly during the regular Legislative Session.

We welcome letters, articles, and artwork from readers and reserve the right to edit or reject submissions. Please send materials to Denise Poole, *editor* at deniseap@earthlink.net



Support the West Virginia Environmental Council

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| Seedling: | _____ \$50 | Sustaining: | _____ \$100 |
| Enviro Steward: | _____ \$250 | Canopy: | _____ \$500 |
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WVEC Legislative Update Newsletter

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