



*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 7 – This and That

On Monday – E-Day – I asked Delegate Barbara Fleischauer (D-Monongalia) if she would announce during the House floor session that it was the 24th annual West Virginia Environmental Council E-Day at the Capitol, and the 25th year of WVEC advocacy at the Legislature.

Typical of Delegate Fleischauer, she took things a step further and added, “I don't think it has ever been more urgent . . . to protect our water. Would the House members please stand and recognize E-Day at the Legislature?”

And she made them stand!

Delegate Fleischauer, you are the real deal.

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Best quote during the water crisis: "I wouldn't drink that water if you paid me." – U.S. Senator Jay Rockefeller to NPR's Melissa Block.

\* \* \* \* \*

There was no movement this week on SB 373, the Above Ground Storage Tank Bill. The bill is sitting in the House Judiciary Committee, waiting while the committee deals with other bills that are on a deadline to pass out of committee this week.

There is talk of some type of “stakeholder” meeting to discuss the bill this weekend. But no details have been announced.

\* \* \* \* \*

Likewise, until today there has been no movement on HB 4411, the bill dealing with landfills and drill cuttings, since a public hearing was held on the bill Monday evening. From our standpoint, the public hearing was a success. About 20 persons spoke against the bill, with only one industry lobbyist showing up to support the bill.

However, the bill was on the House Judiciary Committee agenda today, and was amended and passed out of committee late this afternoon. See update by Vickie Wolfe on page 5.

\* \* \* \* \*

The Future Fund Bill, SB 461, passed out of Senate Finance Committee on Tuesday, and is on third and final reading on the Senate floor today. That leaves plenty of time for the House to deal with the bill – if it wants to. The bill establishes a “Future Fund” of revenue derived from “excess” natural gas severance taxes.

Last week the Senate also introduced Senate Joint Resolution 14, the Future Fund Constitutional Amendment that would protect the **principal** of the West Virginia Future Fund and specify how the **interest** from the fund may be spent.

If adopted, the principal could not be spent, and interest income could not be spent until six years after creation of the fund. Then the interest income could be spent “solely for enhancing education and workforce development; economic development and diversification; infrastructure improvements; and tax relief measures for the benefit of the citizens and businesses of the State of West Virginia.”

The proposed amendment to the Constitution would be submitted to the voters of the state at the next general election to be held in 2014. SJR 14 is on second reading, but still under consideration in Senate Finance.

\* \* \* \* \*

Finally, it appears that **most** of the “bad” bills we have been tracking and worrying about will not advance this session. More about that next week.

We are finally having a reprieve from winter’s blast, and the songbirds are beginning to display their spring colors. So keep those birdfeeders full and enjoy the show.



## Weekly Statehouse Aquapocalypse Update

By Vickie Wolfe, WVEC Lobbyist

On Tuesday, Governor Tomblin and Department of Health and Human Resources Secretary Karen Bowling sent a letter to Dr. Tom Frieden, Director of the Centers for Disease Control and Prevention (CDC), to formally request that the CDC or its partners immediately conduct further epidemiological and/or toxicological studies and address ongoing population surveillance or monitoring as a result of the January 9 Elk River chemical spill. You can read the letter here:

<http://www.governor.wv.gov/Documents/20140218181709403.pdf>

On Wednesday, the Governor sent a letter to FEMA requesting a 30-day extension of the time period during which he may ask for a major disaster declaration, so that realistic estimates of the costs and impacts of the Elk River spill might be developed.

Also on Wednesday, the Senate Judiciary Committee passed SJR 12, which proposes an amendment to the State Constitution that would claim the state's waters "as valuable public natural resources held by the state for the use and benefit of its people." The state's waters are already "claimed" in statute; but including such a provision in the Constitution makes it more difficult to change. The Resolution is on second reading in the Senate on Monday.

On Friday, the Legislative Oversight Committee on State Water Resources heard from Michael Dorsey, who is DEP's Chief of Homeland Security and Emergency Response. They also heard from Harold Ward, DEP's Division Director of Mining and Reclamation, regarding last week's coal slurry spill into Fields Creek and the Kanawha River.

As Don told you above, the House Judiciary Committee took no action this week on S.B. 373, as they were pushing to meet Sunday's deadline for bills to be out of committee in their "house of origin." We expect to see activity on 373 next week. Stay tuned!

Now, the last three days on which bills could be introduced (Monday the 17<sup>th</sup> was the last day) saw the appearance of several water-related bills, which are briefly described below. Some of these would do good things. The bad news is that, at press time, none had been taken up by the committees to which they'd been assigned, so we expect them all to die; but it's possible that some of their provisions could be amended into bills that are still alive.

S.B. 542 by Senator Wells (D-Kanawha) encodes the requirement that the DEP must be notified of "any release of any fluid or chemical from a facility or storage unit into groundwater, surface water, or subsurface soils." (Note: Freedom Industries' "general" NPDES permit required them to report any spill. S.B. 542 would put the reporting requirement into state code.)

S.B. 605 and S.B. 622 both would create and fund the “West Virginia Water Sustainability Institute” “to create a public-private partnership for promoting innovative technology to identify, invent and use through scientific methodologies, testing, separation, filtration and other purification technologies for detecting and removing pollutants from water supplies.” The Institute would be located at the West Virginia Regional Technology Park, and would be required to partner with the WVU Water Institute. The difference between the two bills is the manner in which the Institute would be funded.

S.B. 627 and H.B. 4515 would give the Division of Homeland Security and Emergency Services a process for preventing and mitigating catastrophes involving toxic substances.

H.B. 4527 would require all public water utilities to implement an “early warning monitoring system” and also to install either a second intake or have three to five days’ raw water storage (the latter requirement was amended into S.B. 373).

H.B. 4530 would add additional requirements relating to industrial facilities emergency event notification and access, and also would create an aboveground storage tank registry (which is created by S.B. 373), and an Industrial Accident Citizens’ Protection Fund.

Finally, H.B. 4572, by Delegates Skinner and Manchin, would create the “Citizen Enforcement of Clean Water Act,” which would establish that “Citizens of this state may commence on their own behalf, or as a class action, a civil action . . . against any person or entity . . . who is alleged to be in violation of any law enacted by the United States or this state to protect the air, water or any other natural resource of this state or the United States.” This Act would encode for all environmental protection laws the citizen suit provisions we’ve been requesting to be included in S.B. 373.

### **DEP Working Another Coal-Industry Spill, in McDowell County**

As West Virginia environmental regulators plan more steps in response to last month's coal-cleaning chemical leak into the Elk River and a coal-slurry spill last week, state inspectors were on the scene Wednesday of another mining-waste accident.

Department of Environmental Protection inspectors reported a spill of polluted water from a former McDowell County slurry impoundment that had been reopened by a company re-mining the site for leftover bits of coal.

DEP officials said runoff from melting snow overran the site's sediment control ponds, sending "blackwater" running into an adjacent creek.

The incident occurred at the Antaeus Gary impoundment site, formerly owned by U.S. Steel Mining, at Gary. The facility had been abandoned, and the impoundment reclaimed by the DEP, following a major accident in May 2002.

Earlier in the day, DEP officials had been discussing their continued response to the Jan. 9 chemical leak at Freedom Industries in Charleston and to last week's coal-slurry spill at a Patriot Coal processing site in Eastern Kanawha County.

In an interview, DEP Secretary Randy Huffman said he's trying to focus his agency and the industries it regulates on preventing such spills from happening in the first place, rather than just simply responding afterward.

"It's easy to get trapped into accepting that, whether it's the companies or the regulators or even the community," Huffman said, "but you don't protect the environment by reacting after the fact."

. . . As legislation responding to the Freedom Industries leak makes its way through the Statehouse, Huffman said he wants lawmakers to remove the long list of industry-proposed exemptions to a bill to set new safety standards and inspection requirements for chemical storage tanks. Only very small tanks for things like home heating oil should be exempt, Huffman said. Any other tanks should only end up exempt if their owners can show they are governed by another equally stringent set of safety guidelines, Huffman said.

(The above is an excerpt of a Feb. 19 *Charleston Gazette* article by writer Ken Ward, Jr. You can read the entire article here: <http://www.wvgazette.com/News/201402190057> ).

## **This Week's Activity on the Landfill/Drill Cuttings Bill**

By Vickie Wolfe, WVEC Lobbyist

As we told you last week, H.B. 4411 and its companion, S.B. 474, would encode a waiver of landfill tonnage caps for Marcellus drill cuttings.

On Monday, the House Judiciary Committee held a public hearing on 4411 in the House chamber. As Bill Hughes of the Wetzel County Solid Waste Authority put it, legislation passed more than 20 years ago created a "three-legged stool" requiring the DEP, the Public Service Commission and local solid waste authorities "to work together in deciding sizing and environmental restrictions" of landfills. Several speakers expressed concern that 4411 takes away the ability of local solid waste authorities to monitor and control the waste entering their landfills. Out of more than 20 people who testified at the public hearing, only one spoke in the bill's favor.

On Friday afternoon, the Judiciary Committee passed a committee substitute with several amendments, ultimately resulting in a bill that is less disagreeable. By 1/1/2015,

the DEP must submit to the Joint Legislative Oversight Commission on Water Resources and the Legislature's Joint Committee on Government and Finance a report that examines the hazardous characteristics of leachate collected from solid waste facilities receiving drill cuttings and drilling waste, including not only radioactivity but other hazardous substances such as heavy metals and petroleum-related compounds. The DEP is required to set limits on these substances.

The bill also now includes a sunset date of 6/30/2015, by which time the DEP and the Legislature need to set new standards for dealing with this waste. Finally, the bill now includes an additional tipping fee of \$1.00 per ton on drill cuttings & drilling waste, for the purpose of repairing roads damaged by the large number of heavy trucks.

Next week we expect the bill to be placed on the calendar of the House, where it could be further amended and voted on for passage.

## E-Day! 2014

This was an exceptional 24<sup>th</sup> annual E-Day! Approximately 150 people and 20 organizations participated. The day was filled with citizen lobbying, environmental displays, our press conference, a march to the governor's office led by the Sierra Club delivering a petition, music by Mike Pushkin and Paul Epstein, appearances by "El Gleno Grande" and "Clean Water".



El Gleno Grande! (Glenn Singer) and 'Clean Water' (Jude Binder). *Photo by Vickie Wolfe*



Marium Bria takes the stage.

The E-Day Benefit Dinner included musicians Marium Bria, Ammed Solomon, Andy Park, Mike Pushkin and Paul Epstein who graced us with their tunes. Poet Chrystal Good recited three original powerful poems, and Jude Binder performed a dance choreographed to the Grateful Dead's version of "Ripple", to which Andy Park sang and played acoustic guitar.

We are honored to have bestowed four awards: The Mother Jones (posthumously) to Kevin Smith - Kevin's mother Debbie and his long time partner James Zabolotny accepted on Kevin's behalf. The "Linda Schnautz Environmental Courage" to Angie Rosser, director of WV Rivers Coalition; "Laura Forman Grassroots Activist" to Karan Ireland, and

“Don Gasper Science in the Public Interest” went to Evan Hansen, president of Downstream Strategies.

An article by Ken Ward Jr. published in the Charleston Gazette is a great overview of the day at the capitol – see his article below.

## Citizen Groups Push For Broader Water Reforms

By Ken Ward Jr., Charleston Gazette

Environmental groups gathered at the state Capitol on Monday, hoping to convince lawmakers that last month's Elk River chemical spill is proof that major changes are needed in how West Virginia protects its water.



*Photo by, Lawrence Pierce*

Amanda Pitzer, director of Friends of the Cheat, talks with Charleston resident Paul Dalzell about the quality of the state's water during the West Virginia Environmental Council's annual E-Day at the state Capitol.

As part of its annual E-Day, West Virginia Environmental Council organizers urged the Legislature to strengthen a chemical storage tank bill and broaden their approach to other water quality and public health issues.

"This is not just about Freedom Industries," said Angie Rosser, executive director of the West Virginia Rivers Coalition. "It's about what's been happening across our state for decades."

Rosser was among about 100 people from around the state who gathered in the Capitol's lower rotunda for a press conference and rally, as various full-time lobbyists watched from a floor above.

Among other things, environmentalists said they wanted lawmakers to remove industry-proposed exemptions from the chemical storage tank bill, expand the types of facilities covered by the legislation, and mandate creation of a new chemical accident prevention program recommended by the U.S. Chemical Safety Board.

"The problem is not that one leak from that one tank on the Elk River," said Jim Kotcon, longtime leader of the West Virginia Sierra Club. "The problem is tank after tank and impoundment after impoundment that are leaking all the time."

Don Garvin, the environmental council's lead lobbyist, said he sees some progress with lawmakers.

For example, Garvin said, lawmakers removed a weakened water pollution limit for aluminum -- a measure backed by the coal industry and the Department of Environmental Protection -- from a bundle of DEP rule changes.

"We raised an issue about weakening the state's water quality standards," Garvin said. "No one wanted to be seen as doing that after the chemical spill."

Three lawmakers spoke at the environmental council event.

House Health and Human Resources Committee Chairman Don Perdue, D-Wayne, lamented that it took a major chemical spill for lawmakers to consider some basic safety rules on above-ground storage tanks.

"The bill that came before us should have come before us twenty years ago," Perdue said.

Perdue said if the bill that eventually passes isn't strong enough, "it will happen again." And, he said, even once that bill is law, there is much more lawmakers need to do.

"There's no way to do all of the things that need to be done in one session," Perdue said. "It could take years."

Delegate Barbara Fleischauer, D-Monongalia, told the crowd that it's "critically important" for lawmakers to "see that the public feels strongly about this issue."

Fleischauer said she's disappointed that so many state leaders continue to rant about government regulations, even after the April 2010 explosion at Massey Energy's Upper Big Branch Mine.

"How can anyone say that after 29 miners died that we need to lighten up on regulations?" Fleischauer said.

Delegate Mike Manypenny, D-Taylor, said, "How many wake-up calls is it going to take before we get effective legislation to protect our water?"

*This article appeared in the Charleston Gazette February 18, 2014 - Reprinted here by permission.*

Reach Ken Ward Jr. at [kw...@wvgazette.com](mailto:kw...@wvgazette.com) or 304-348-1702.



## Water Unites Us – Forum Held at Marshall University

By Denise Poole, WVEC

The first of what is intended to be several forums entitled “Water Unites Us” took place Thursday evening in Huntington on Marshall University’s campus sponsored by OVEC, WV Highlands Conservancy, MU Student Environmental Action Coalition and MU Students for Appalachian Socialism. These forums are meant to better inform citizens about the water crisis and actions they can take to prevent future such disasters. About 70 residents were in attendance

The expert panel included Evan Hansen, president of Downstream Strategies; Dr. Andrew Whelton – Ph.D., Associate Professor of Environmental Engineering with the University of Southern Alabama; Maya Nye, spokesperson for People Concerned About Chemical Safety; and Cathy Kunkel with Energy Efficient WV.

Both Evan Hansen / Downstream Strategies and Dr. Whelton / University of Southern Alabama have conducted testing of residents’ tap water in Kanawha County. The studies and analysis are still ongoing, with results to be released soon. They did say that four out of ten homes tested still had MCHM detections.



The Panel: Cathy Kunkel, Maya Nye, Dr. Andrew Whelton and Evan Hansen. *Photo by Denise Poole*

Emphasis was placed on just how little we know about these chemicals, and the need to enforce DEP permits, the Clean Water Act, Safe Drinking Water Act and an emergency plan. “DEP had a permit and had responsibility to enforce that permit – they didn’t.” said Evan Hansen. He also made reference to SB 373, and that amendments were added to strengthen the bill, and hopes House Judiciary will strengthen it even further.

Dr. Whelton called the Freedom Industries spill, “the largest chemical spill in U.S. history, affecting 15% of the population’s drinking water.” Results from his testing (WV Tap Program) were set to be presented at a Press Conference today. As we go to press we haven’t seen these results. We will update you soon.

Maya Nye focused on the fact that so many good recommendations and a strong “Industry Safety Ordinance” model from California have been suggested to the WV legislature and regulatory agencies in the past, however were never adopted. The Chemical Safety Board also made similar recommendations. “The Kanawha River has more chemicals & toxins than any other in the U.S., and it’s important that you know what you are being exposed to in order to make sound judgments about your health.” Said Nye.

Cathy Kunkel told the crowd that WV American Water had over time, bought out several smaller water municipalities to create the monopoly we have today. She urged everyone to be more active – and step into the process putting pressure on the Public Service Commission (PSC) to build secondary intakes. “The response of WV American Water is totally inadequate.” She said.

## **Worth the Read**

Citizens Speak Against Frack Waste Bill

<http://www.wvgazette.com/News/201402170174?page=1>

To Reduce Poverty, Let's Stop Literally Poisoning The Poor

<http://theweek.com/article/index/256572/to-reduce-poverty-lets-stop-literally-poisoning-the-poor>

Eastman Part of Coalition that Quashed Stricter Bill on Chemicals

<http://www.opensecrets.org/news/2014/02/eastman-part-of-coalition-that-quashed-stricter-bill-on-chemicals.html>

Don't Let Coal Companies Pollute Our Drinking Water

[http://www.change.org/petitions/secretary-of-interior-sally-jewell-don-t-let-coal-companies-pollute-our-drinking-water?utm\\_source=action\\_alert&utm\\_medium=email&utm\\_campaign=49245&alert\\_id=ywiJQWSBGi\\_wIVarfSrcw](http://www.change.org/petitions/secretary-of-interior-sally-jewell-don-t-let-coal-companies-pollute-our-drinking-water?utm_source=action_alert&utm_medium=email&utm_campaign=49245&alert_id=ywiJQWSBGi_wIVarfSrcw)

Clean Water Laws Are Neglected, at a Cost in Suffering

[http://www.nytimes.com/2009/09/13/us/13water.html?\\_r=4&](http://www.nytimes.com/2009/09/13/us/13water.html?_r=4&)

West Virginia is Open for Business

<http://www.esquire.com/blogs/politics/west-virginia-fracking-021814>

Maria Gunnoe: Flush Career Politicians Down the Drain

<http://www.wvgazette.com/Opinion/OpEdCommentaries/201402190189>

Paul Epstein: Water Crisis Fix Is Complex

<http://www.wvgazette.com/Opinion/OpEdCommentaries/201402170064>



## Calendar of Events



**February 23:** Book Signing – “Inhabiting Eden, Christians, the Bible, and the Ecological Crisis”. Taylor Books welcomes author Patricia K. Tull, Professor Emerita of Old Testament at Louisville Presbyterian Seminary for a discussion of her new book. Taylor Books - 266 Capitol Street, Charleston. Begins at 2:00 PM.

**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 (CO<sub>2</sub>) emissions.

In June 2013 President Obama directed EPA to complete CO<sub>2</sub> 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 CO<sub>2</sub> emissions. At the same time, EPA’s rules are expected to provide a number of compliance options for states in achieving the CO<sub>2</sub> 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 CO<sub>2</sub> 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.politicecology.org](http://www.politicecology.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](http://www.mjsb.org)

**March 17:** Drinking Water Source Protection meeting. Beverly Hills Presbyterian Church – 469 Norway Ave., Huntington. Begins at 7 PM. Sponsored by the League of Women Voters.

**March 22:** WVEC Board of Directors meeting. TBA

**June:** WVEC Board of Directors June Retreat. TBA

**June 21 & 22:** 9<sup>th</sup> 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](http://www.lapaixherbfarm.com)

**Fall 2014:** 25<sup>th</sup> 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](mailto: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](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>

WV –CAG Office: (304) 346-5891

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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)



## Support the West Virginia Environmental Council

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