



Capital Eye

Volume 11, No. 5 ~ February 11, 2011

## Week Five Cranks it Up

By Gary Zuckett, [garyz@wvcag.org](mailto:garyz@wvcag.org)

As the legislative process begins to accelerate, things start getting a little crazier and the analogy of the snowball rolling down the hill gaining size and speed comes to mind. There are now 1617 bills introduced into both Houses – way too many for anyone to deal with effectively. Fortunately the rules of the game here weed out the non-performers by the end of the month. The first deadline is on President's Day, Feb 21<sup>st</sup> which is the last day bills can be introduced (with certain exceptions). There's always a flurry of last minute bills that have been languishing in bill drafting for weeks that miraculously appear on the last day. Those overworked temps in the bill drafting department must not sleep that last weekend before the cutoff.

This past Wednesday was Environment Day (E-Day) at the capitol and as a member organization (and co-founder) of the WV Environmental Council, WV-CAG always sets up a booth. The main focus this year was on all the enviro and social justice issues surrounding the Marcellus Shale. This was underscored by a packed noon press conference where at least six legislators spoke on the need to “do it right” and not make the same mistakes in development of the Marcellus that were done during the last century in the coalfields. Our Surface Owners Rights Organization was well represented and we have the whole event on our YouTube site (in four short pieces) at <http://www.youtube.com/watch?v=owZC9Nn05qY> . Here is the Gazette article on the event: <http://www.wvgazette.com/News/politics/201102091346>

See Julie's article for details on how the two bills attempting to regulate this boom are fairing. We expect a public hearing next week but may not have a date & time before we go to press. Watch for e-mail updates as we get details on this and other action items!

## Marcellus Shale Bills: What's in them (and what's not)? – Volume 3

By Julie Archer, [julie@wvcag.org](mailto:julie@wvcag.org)

Both of the anticipated bills regulating Marcellus Shale gas drilling have now been introduced. The “Hydraulic Fracturing and Horizontal Drilling Gas Act” (HB 2878 & SB 258), which was prepared by legislative staff for an interim study committee, was introduced two weeks ago. A second bill drafted by the WV Department of Environmental Protection (DEP) was introduced last Friday in the Senate (SB 424) and Monday in the House of Delegates (HB 3042). As previously noted, both bills are long and legally and technically complex. This is our third (and hopefully, final) installment in a series on how the bills attempt to address major areas of concern for citizens and the environment.

### Impacts on Roads and Bridges

West Virginia's rural roads cannot handle the industrialization that is occurring due to Marcellus Shale development. Conventional drilling and production activities associated with oil and gas wells are transportation intensive. However, Marcellus Shale drilling operations increase traffic exponentially resulting in damage to existing roads and bridges and increased in accidents.

To address concerns about the damage to our infrastructure, the interim (or Judiciary) bill requires that a Department of Highways Certification be included with permit applications for horizontal wells. The certification would be in the form of a letter from the Department of Highways stating that the operator has entered into an agreement and is in compliance with all laws, regulations and conditions required by the DOH related to use, maintenance and repair of all state and county roads that will be used to access a well location. The DEP bill does not specifically address this concern, although DEP representative told members of the interim committee that something similar would be included on their checklist for ensuring that applications for drilling permits are “administratively complete.”

### Coordination with Emergency Services

A series of incidents last year, including two well fires and explosions in Marshall County, highlighted the need for drillers to coordinate with local emergency services personnel and first

responders. The DEP bill would require permit applications for all wells to include “a well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities, and production activities.” Under the DEP bill, drillers must also have an “emergency action plans” in place for pits and impoundments with a capacity of more than 210,000 gallons.

### **Corporate Accountability**

Both bills contain provisions aimed at ensuring companies seeking drilling permits are good corporate citizens.

The DEP contains a provision designed to prevent an operator who has had a permit revoked or forfeited a bond from operating and obtaining permits under another name or corporate shell.

The Judiciary bill requires the DEP to verify an applicant’s compliance with the state’s Labor Management Act and Unemployment and Workers Compensation Fund requirements, and check to see if they have posted the wage and benefit bonds required of engaging in “the severance, production or transportation of minerals.”

### **Local Jobs for Local Workers**

Although the Judiciary bill in particular requires the DEP to verify a driller’s compliance with various labor laws, there is nothing in either bill to help ensure that employment opportunities created as a result of Marcellus Shale development go to local workers first. We support our labor allies in their efforts to require construction related activities such as drilling, pipeline installations and construction of processing facilities to comply with the WV Jobs Act.

### **Reforming Hiring Practices and Funding for Inspectors**

Both bills would provide DEP with much needed funds to hire additional inspectors through an increase permit fees. The Judiciary bill establishes the following fees for horizontal wells:

- \$15,000 initial application fee for each permit
- \$15,000 reclamation fee

- \$10,000 fee for to modify a permit
- \$5,000 annual renewal fee

The DEP bill would set permit fees for horizontal wells at \$10,000, but proposes no other new or increased fees. In addition, the DEP bill also reforms hiring practices by doing away with the Oil and Gas Inspectors’ Examining Board, which has been historically dominated by the regulated industry, and gives the DEP secretary the authority to hire inspector under the civil service system.

## **Really Big News: David v. Goliath, or The People v. MIC!**

By Beverly Steenstra, [bev@wvcag.org](mailto:bev@wvcag.org)

Yesterday, inside a courtroom packed with concerned citizens from all walks of life, Federal District Court Judge Robert Goodwin slapped down a pack of Bayer CropScience lawyers and executives with a startling order temporarily restraining Bayer’s “restart” of the MIC unit at Institute! This is HUGE, people, on a number of levels, even if the operative word here is “temporary.” The discovery phase of the lawsuit likely will require Bayer to disclose every last drop of information it has concerning MIC and its production and use, and to explain thoroughly what they expect would happen in the event of a catastrophic event at the Institute plant. Here’s the [order](#), and it’s a sight for sore eyes!

Unfortunately, the Judge also had to order – by law - that the plaintiffs in the lawsuit against Bayer post a \$10,000 bond and that the order would not go into effect until that bond was posted. Draw your own conclusions about what sort of scurrying around was afoot last night over at the plant while the plaintiffs were struggling to figure out how to raise the cash! But happily, as I write this, William DePaulo, the plaintiffs’ attorney – *pro bono*, I might add – and Maya Nye, spokesperson for People Concerned About MIC (PCMIC), are posting the bond from loans and donations given by supportive citizens who know what a historic event this is, and that Bayer, at least for the next two weeks, cannot operate under its usual veil of lies and secrets.

Funds are desperately needed to support this effort. If you would like more information about the suit, or would like to donate money or time to help the effort, please contact Maya at (304) 389-6859,

or visit the PCMIC [website](#) . Together, we can help make this a MUCH safer place to live our lives – not lose them!

## **Women’s Reproductive Health Issues HB2439**

HB2439, relating to insurance coverage and requiring coverage of spouses and dependents for pregnancy and contraceptive service was introduced on the first day of session and unfortunately hasn’t received much attention from lawmakers. In essence, the purpose of the bill is to require insurance coverage for spouses and dependents for pregnancy and contraceptive services – a fine idea! At the moment, however, the bill is sitting in the House Banking and Insurance Committee, where it hasn’t budged since introduction; and since it is double referenced to House Judiciary, time is running out for significant action on it. Although it’s pretty short on words, you can click here to read [the bill](#). Please take time to call Delegates Clif Moore (304-340-3189) and/or Dave Perry (304-340-3117) and urge them to put the bill on the agenda before time runs out!

## **Public Hearings on Tobacco and Government Murder**

Two public hearings are set next week. One on the tobacco tax and another on the death penalty. On Wednesday, February 16 at 9 AM in the House Chamber on HB 2973 (same as SB 362) , a bill that would raise the state tobacco tax by \$1 a pack. This would cut down on the number of youth who become addicted, encourage thousands to quit, and fund state cessation programs to help them. For more on this issue, please visit [www.sfwvc.com](http://www.sfwvc.com) or [www.ctfwv.com](http://www.ctfwv.com).

The other, HB 2526, seeks after 46 years, to reestablish the death penalty in WV. The hearing is set for Tuesday February 15<sup>th</sup> at 2:15 p.m. in the House Chamber. Several things come to mind when this type of bill comes up year after year. Why is it that the sponsors are always the ones who proclaim themselves “pro-life”? Another is why haven’t they read all the studies and statistics (and horror stories of innocents going to the chair) that have most other states running in the opposite direction?

## **Marcellus Shale Regulation Focus of E-Day; Bills Gaining Momentum in the House**

By Julie Archer, [julie@wvcag.org](mailto:julie@wvcag.org)

On Wednesday, activist and concerned citizens from around the state traveled to Charleston to urge their legislators to support legislation regulating Marcellus Shale drilling. Several legislators are heading the call. Acting Senate President Jeff Kessler, Senators Dan Foster and Orphy Klempa, and Delegates Tim Manchin, Barbara Fleischauer, and Mike Manypenny joined the WV Environmental Council and its member organizations and allies for a press conference during the WV Environmental Council’s annual E-Day at the legislature. “Do it right,” was a common refrain in the remarks of these legislators, environmental activists and surface owner representatives who came together to emphasize the urgent need for legislative action. You can read coverage of the press conference at [www.wvsoro.org](http://www.wvsoro.org) or watch it yourself, starting with part 1, by going to <http://www.youtube.com/watch?v=owZC9Nn05qY>.

In addition to the E-Day activities on Marcellus Shale drilling, the House Judiciary and Finance Committees held their third joint informational meeting to hear presentations from various experts and stakeholders. Topics covered by the speakers at Wednesday’s meeting included pooling and unitization, water use and surface owners’ rights. Wetzel County farmers Marty Whiteman and Ed Wade gave first hand accounts of what it is like to contend with the light, noise, air pollution and heavy truck traffic that have become part of everyday life in their rural community. They also urged lawmakers to consider the rights of surface owners as they craft the pending measures, to involve them in the planning where and how well sites and access roads will be built, and to ensure they are fairly compensated. Marty and Ed put a face on the problem, showing the pollution and destruction caused by drillers is affecting real people.

Following the informational meeting, a Judiciary Subcommittee was announced to work on HB 2878 the “Hydraulic Fracturing and Horizontal Drilling Gas Act.” The subcommittee held its first meeting yesterday morning and we expect them to resume their work this coming week. There may also be a

public hearing and we hope to know the details on Monday.

## Health Exchange Bill Introduced

As we've been anticipating, the Office of Insurance Commissioner has introduced Senate Bill 408, establishing a Health Insurance Exchange to dovetail with the national Affordable Care Act (ACA). You can read the [text of the bill](#) here or better yet contact members of the Senate [Health & Human Resources](#) Committee and ask them to drop from the board any group that has a financial conflict of interest and make sure consumers have the largest block of votes on the board. An estimated 178,000 West Virginians will be eligible to purchase health insurance through the Exchange once it is set up and the ACA kicks in federal funding.

## Unemployment Bill Passes Senate Labor Committee – Keep it Moving!

By Gary Zuckett, [garyz@wvcaq.org](mailto:garyz@wvcaq.org)

Why is the WV Chamber of Commerce opposed to extending Unemployment Insurance (UI) to battered spouses and workers who lose their jobs because they have to stay home to care for incapacitated family members? Can their bottom line be that tenuous that having to kick-in a few bucks more to extend coverage to these and other hard-pressed workers will break them? Nevertheless, they are the one group that's working against this modest increase in coverage. Shame!

The Senate Labor Committee passed SB 310 and sent it to Finance this week. Below are some arguments for the bill.

Under current law, part-time workers (20% of the modern workforce) who are laid off cannot draw UI benefits unless they look for a full-time job -- even though they pay into the unemployment system.

This is not fair to:

- Full-time students working part-time to put themselves through school.
- People who can only find two part-time jobs and get laid off from one.
- A spouse/second breadwinner who works weekends to help the family make ends meet.

- Women who make up 42% of the work force, though 70% of them work part-time.
- Minorities who disproportionately work part-time jobs.

Under current law, a victim of domestic violence who leaves a job to stay alive cannot draw unemployment benefits while they look for a safe job because the law says they left work "voluntarily". When a worker starts looking for work after caring for a sick relative the worker cannot draw unemployment benefits because the law says they left their last job "voluntarily" to care for the family member. Under current law, if one spouse is transferred to another city or state, the "trailing" spouse who moves to keep the family together cannot draw unemployment benefits when they start looking for work in the new location, again because they left their last job "voluntarily".

Updating this law, and making these workers eligible for benefits, will draw down \$22 million in federal funds for WV into the fund that pays these benefits. That's enough to pay for the estimated 3% increase in benefits for 3, 4 or maybe 5 years -- well after economists expect the recession will be over and our fund will rebound. Right now they expect it to hit the red ink sometime this Spring and the federal funds will keep us from having to dip into our "Rainy Day" fund to make up the shortfall.

Times have changed since the UI Program was enacted in the 1930's. Modernization is needed. Call your State Senators and ask them to support SB 310 - Unemployment Modernization. Call 1-877-565-3447 to leave a message or be transferred to your Senators' offices. You can leave messages after hours that will be delivered to your Senator the next day. Click on this URL to take action now <http://capwiz.com/preventchildabusewv/utr/2/?a=26617501&i=106687512&c=>

## Listening Tour on Transportation Kicks off in WV

By Gary Zuckett, [garyz@wvcaq.org](mailto:garyz@wvcaq.org)

On Valentines Day the US House Transportation Committee will kick-off a nation-wide "listening tour" to get input from citizens and local officials prior to the reauthorization of the Federal Transportation Act. Rep. Mica, Chairman of the Committee, will

accompany Nick Joe Rahall and Shelley Capito in holding two meetings on Monday the 14<sup>th</sup>. The first will be a public meeting held in the theater at Tamarack in Beckley from 8-10 AM. The second will be a "Listening Session" at Yeager Airport around 11. I've been told that citizens who have concerns about improving transportation options in our state are welcome to submit written comments at the Tamarack venue. Details on the airport venue were not available at press time. Watch this newsletter for future actions on transportation issues.

Investing in transportation creates jobs. Repairing roads and bridges, maintaining our freight rail systems, and investing in transit not only directly create jobs in construction and operation of transit systems, it can also help spur manufacturing. Our state needs a special emphasis on providing affordable rural transportation including programs for low-income workers to afford automobile transportation in addition to improving public capacity. Find out more at Transportation 4 America [www.t4america.org](http://www.t4america.org)

### Images from E-Day at the Capitol!



*The Mountain Goddess*



*Standing Room Only at E-Day Press Conference!*



*Beth Little educates the media about pit liners being the pits!*



*SORO King Dave McMahon having media time, too!*

WV Citizen Action  
1500 Dixie Street  
Charleston, WV 25311

*Capital Eye is published by WV-Citizen Action, a nonprofit membership organization founded in 1974 and dedicated to increasing citizen participation in economic and political decision-making. Our members work for progressive changes in federal, state, and local policies by educating people about key public interest issues ranging from environmental protection and consumer rights to good government. Learn more about us at [www.wcag.org](http://www.wcag.org)*



We Need Your Support  
We can't do it without you!

**Please renew your membership or send a donation.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

Here's my donation of: \_\_\$25 \_\_\$50 \_\_\$100 Other  
\$\_\_

Clip and mail with your check to West Virginia  
Citizen Action Group, 1500 Dixie Street,  
Charleston, WV 25311