



THE HIGHLANDS VOICE

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The Highlands

DNR Wants Corridor H Stopped

The W. Va. Department of Natural Resources wants Corridor H stopped at Elkins.

Not building the four-lane, trans-montane roadway is the "most preferable" alternative of the W. Va. Department of Natural Resources, according to comments made by the department in response to a draft environmental impact statement prepared by the agency.

However, if a highway is to be built over the objections of the DNR, then "the purpose of (the highway) can be accomplished with least damage to natural resources (by) upgrading existing U. S. Routes 219 and 50 and State Routes 32 and 93 between Elkins, West Virginia and Winchester, Virginia by providing passing lanes, straightening curves" and other measures, according to DNR director Dave Callaghan.

Callaghan's and the department's comments, submitted in late July to the Department of Highways as work continues with the preparation of their final environmental impact statement, goes on to say that if a four-lane highway is built to connect Elkins with Interstate 81 in Virginia, it should go north from Elkins before heading east.

Any easterly route, Callaghan warned in a cover letter appended to an in-depth analysis, might well destroy the Bowden National Fish Hatchery as well as more than 40 miles of the state's prime trout streams.

"Regardless of highway design and construction control," Callaghan wrote "construc-

tion is expected to impact the hatchery's main water supply." Protective measures suggested in the draft environmental impact statement, the director asserted, "are not realistic or adequate to risk the loss" of the hatchery, a facility he valued at \$11 million-a-year. Callaghan went on to damn the suggestion that three test wells drilled by the Department of Highways could adequately provide water for the hatchery. The wells, he wrote, "are in reality only one well with three openings, as pumping from one opening lowers the water level in the other two openings. These three wells are not expected to produce sufficient flows to sustain the hatchery. The development of a water treatment facility for using Shavers Fork water is economically imprac-

tical. In addition to the initial construction costs for the treatment facility, there are continued operation and maintenance costs for the life of the hatchery. There is no indication in the (draft EIS) as to who will bear the treatment facility's operating and maintenance costs. Replacement of the hatchery is very questionable since suitable replacement sites are virtually nonexistent."

If the highway to be built, however, Callaghan said he and his staff would recommend the route heading north from Elkins to Parsons, Thomas, Davis and then up to Route 50 and east to Winchester. Callaghan said that alternative avoids many of the adverse impacts of the other alternates as well as raising the likelihood of providing increased revenues to Canaan Valley State Park.

Elkins

Mower and the Fork

The hurly-burly's not yet done

A demand that the W. Va. Highlands Conservancy pay more than \$7,000 in attorneys fees and other court costs for having tried to stop the Mower Lumber Company from tapping its reserves of coal in the Monongahela National Forest was turned aside in early August by U. S. District Judge Robert E. Maxwell in Elkins.

"... the Court is of the opinion," the judge wrote in his order, that "was not instituted in bad faith or for the sole purpose of harassing" Mower.

The decision arose from a federal court suit filed earlier in the year in which the Conservancy sued the U. S. Secretary of the Interior, contending he did not have the right to allow Mower to open up its coal mines on the Shavers Fork of the Cheat River. The suit was unsuccessful, the Conservancy appealed and the appeal was later dismissed.

However, in the meantime, Mower filed suit against the Conservancy, That

contending that the court action was taken only to harass the firm and impede the opening of its mines.

In his decision rejecting the request, the judge noted that

Philadelphia

Acid Drainage OK

The nation's chief environmental agency elects to allow mining even when they're certain it will produce long-term damage

The Holly Grove Coal Company can strip mine its 251-acre site near Canaan in Upshur County -- but it will have to pay 15 to 50 cents a ton in order to treat the acid mine drainage that federal officials believe will inevitably be produced.

That conclusion is one of the recommendations contained in an environmental impact statement slated for release shortly by the U. S. Environmental Protection Agency's Region III offices in Philadelphia. That recommendation --

ther, an EPA technical advisory committee has concluded that even the use of the best-available techniques for strip mining would not be likely to prevent the acid drainage. It found that the best stripping techniques available today are not working at many sites around the Mountain State. Those techniques were designed to eliminate acid mine drainage from strip mine sites, but the EPA wrote that the techniques are not being followed closely enough to guarantee protection.

statement -- have been slated for a public hearing on Oct. 14 at 7 p.m. at W. Va. Wesleyan college in Buckhannon. The EPA study, according to an executive summary which the agency has released, shows that "significant amounts of acids" will be produced by mining the Holly Grove site; that there are no natural means to neutralize those acids; and that "acid mine drainage will likely occur" during and after mining. Fur-

Fairmont

The President's Voice

By JEANETTA PETRAS

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VOICE EDITOR

Judy Frank; P.O. Box 1121, Elkins, WV 26241 (636-1622)

Lesson learned: do not procrastinate when it comes to writing your column and expect the U. S. Postal Service to operate. Contrary to appearances, I did get my column submitted last month in time for the emergency deadline, or so I thought. However, it did not arrive on time, no thanks to the mail service. It may appear that I am blaming the mail people for the late arrival -- not so. Indeed, I owe an expression of thanks to them. I believe -- I hope -- it has encouraged me to make the first deadline, if not a week before.

But, be that as it may, let me inform you of what could be old news to some. If you have not already caught wind of a newly-formed state air quality organization, I'm sure you will in the very near future. On July 11th, a group of representatives from various environmentally concerned organizations met in Charleston and brainstormed over West Virginia's role in the rapidly approaching Congressional battle over the Clean Air Act. This meeting gave birth to the West Virginia Clean Air Coalition (WVCAAC), an organized nucleus for our State's involvement to help keep the Clean Air Act effectively intact. By the time this goes to press, a part-time coordinator will probably have been hired with contributed monies. Word has it that the person who has accepted the position is extremely well-qualified with very impressive credentials. So West Virginia's part in the air quality issue will be well-qualified. I don't think it can be stressed enough that this is one issue that simply cannot pass by without strong and persistent citizen input. If we people concerned with the quality of our air make as strong a showing as industry has and will, chances are good that we can preserve the Act, if not better it. Or, chances are that the fight will go on into 1982, which is not so bad. A recent Harris poll showed that 87 per cent of the people wanted clean air and perhaps even a stronger law to assure it. With this high percentage of people, the Clean Air Act could very well become a political issue in light of the

1982 Congressional elections, a thought quite intriguing.

In any event, take time to learn and update yourself on the happenings around the Clean Air Act. Contact your legislators time and time again stating your support of a strong air quality law. For more information on the bill, you can call the Sierra Club hotline at 202-547-5551.

I hope you are planning to attend the upcoming Fall Review at Watoga State Park. It promises a weekened full of good times, relaxation, socializing and information. We are pleased to announce that Congressman Cleve Benedict will be our guest on Saturday evening for dinner, a talk, and a discussion period. That should ensure a healthy and lively exchange of ideas and information on topics such as the Cranberry, Canaan, and the Clean Air Act. This is an opportunity too-seldom afforded concerned citizens, so I hope you will take advantage of it and join us for the weekend of Oct. 2-4.

You may also have heard of another meeting that same weekend not so far from us. Senator Robert Byrd has invited all Democratic Senators to Canaan Valley for a relaxing get-together away from the hustle and bustle of D. C. While on some of their "recreational outings through the West Virginia countryside" viewing "some of the most gorgeous scenery in the U. S.," I hope they will hold the picture in their minds and hearts and take it back to Washington with them. Maybe they can spread the word from experience that Canaan is a glorious and unique part of the country, and lament for a moment the possibility of its destruction. Could there be some irony in this whole scene?

I'd like to close on a late but great note to Rick Webb, his family, his counsel and environmentalists across the land. On behalf of the Conservancy -- CONGRATULATIONS!!

NOTICE

Entered as second class matter under a re-entry permit pending at Elkins, WV. Main editorial offices are located at P.O. Box 1121, Elkins, WV with main postal entry at Fairmont, WV and an additional entry at Webster Springs. Postmasters should send forms 3579 to P.O. Box 506, Fairmont, West Virginia 26554.

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Benedict, MacDowell Headline Fall Meet

Two men -- one of whom has differed sharply with the environmental community on a wide range of matters and the other of whom has been one of the state's most dedicated and relentless environmentalists, Cleve Benedict and Ric MacDowell -- will be the featured speakers Saturday night during the Fall Review Weekend of the W. Va. Highlands Conservancy.

"A frank discussion of the issues and the alternatives should improve everyone's understanding," commented U. S. Congressman Cleve Benedict when he accepted an invitation to address the Conservancy's annual fall meeting at Watoga State Park near Marlinton. As congressman for the Mountain State's second congressional district, Benedict's balivick covers virtually all of West Virginia's highlands.

Conservancy president Jeanetta Petras said she was "delighted the Congressman has agreed to attend. It is indeed encouraging that Benedict is willing to talk with local people with strongly different views -- although on the Cranberry wilderness, I think we agree. His predecessor, Harley O. Staggers, wouldn't dream of coming to a Conservancy meeting. It should prove to be a lively evening," Petras predicted.

In addition to Benedict, the Watoga State Park meeting about halfway between Elkins and Lewisburg just east of U. S. 219 will also feature Ric MacDowell. His latest slide show, "A Question of Values," will complete Saturday evening's program with slides and music. "We will look at the earth and humankind's effect on it," noted the Fall Review's coordinator Skip Deegans. "We will examine the interrelationship of all things, from the sand and rocks on a beach to the cells in our bodies to the farthest stars in the universe."

MacDowell is a professional photographer and educator from Hamlin. "He is known and respected by Conservancy members as one of our most dedicated and relentless environmentalists," Deegans said. "His effective use of photography has made people all over the country more aware of the unique environmental problems in Appalachia as well as its distinct beauty."

The back-to-back appearances of Benedict and MacDowell form the evening portion of a day-long meeting that is slated to begin Saturday morning with an offering of three excursions. One is a canoe-kayak trip down the Greenbrier or Upper Gauley -- depending on the water level at the time of the trip, Deegans noted. Participants should bring their own canoe or kayak, and the Conservancy's Washington vice-president, Stark Biddle, will be leading the trip. The second excursion is a caving trip to be led by Jerry Kyle. "Watoga is located near some of the finest limestone caverns in America," Deegans noted. The third and last option is a hike along the Greenbrier River on the new Greenbrier River Trail. The abandoned C&O railroad bed is described as "easy hiking" by leader Deegans.

The evening programs with Benedict and MacDowell are slated to begin at 7:30 p.m. and be divided by a break for tea and coffee. Following MacDowell's presentation will be an offering of bluegrass music. "Bring your own instruments," Deegans urges.

Sunday morning opens early at 9 a.m. with the Conservancy's board meeting.

Watoga State Park is located ten miles south of Marlinton off U. S. 219. Accommodations include dormitories with blankets and linens furnished -- and cooking permitted. Cost per person is about \$15 for two nights, Deegans noted.

Schedule

Friday, October 3:
6 p.m. - 10 p.m.

Registration

Saturday, October 4
8 a.m. - 9 a.m.
9 a.m.

Registration
Excursions

Canoe/Kayak Trip on Greenbrier or Upper Gauley, depending on water level. Bring your own canoe or kayak. Stark Biddle, leader
Caving Trip around Watoga which is located near some of the finest limestone caverns in America. Jerry Kyle, leader
Hike along the Greenbrier River on the new Greenbrier River Trail which is an abandoned C&O railroad bed. Easy hiking with Skip Deegans as the leader.

6 p.m. - 7:30 p.m.
7:30 p.m.

Registration
Evening program
CONGRESSMAN CLEVE BENEDICT - Representative from West Virginia's second district.

Tea and coffee break

"A QUESTION OF VALUES" - Ric MacDowell, professional photographer and environmentalist

Bluegrass - bring your own instrument.

Sunday, October 5
9 a.m.

Meeting - board of directors, W. Va. Highlands Conservancy

Watoga State Park is located ten miles south of Marlinton off U. S. Rt. 219.

ACCOMODATIONS

Lodging: Dormitory housing in cabins. Blankets and linens furnished. Cooking permitted in cabins. Cost is approximately \$15 for two nights.
Private cabins. Make reservations directly with the superintendent. Watoga State Park, Marlinton, WV 24954.
Motels
Marlinton Motor Inn in Marlinton (799-4711)
El Poca Motel in Marlinton (799-4204)
Graham's Motel in Buckeye (799-4291)
Hotel
Marlinton Hotel (799-6377)
Camping
\$4.50 per night
\$5.50 per night with electrical hook-ups
Indoor toilets and showers
Meals
Saturday breakfast and dinner and Sunday breakfast will be available at Watoga at reasonable cost.

PLEASE mail the pre-registration form by Sept. 18. Lodging and meals are limited and can only be assured by pre-registering. Pay for lodging, camping and meals during registration at Watoga.

Reservations for private cabins or motel/hotel accommodations should be made promptly. For more information, call 304-645-1656 or write WVHC Fall Review, Box 564, Lewisburg, WV 24901.

..... PRE-REGISTRATION FORM

NAME(s).....

ADDRESS.....

NUMBER OF ACCOMODATIONS

PLEASE CHECK

<> Camping <> Friday night <> Saturday night
<> Dormitory Lodging, Friday night <> Men <> Women
<> Dormitory Lodging, Saturday night <> Men <> Women
<> Saturday breakfast
<> Saturday dinner
<> Sunday breakfast

PLEASE MAIL TO:
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Around the State

Dealing with Hazardous Wastes

EDITOR'S NOTE: These articles are reprinted, with minor editing, from the West Virginia Citizens Action Group's "Hazardous Waste Bulletin." The bulletin was produced under a grant from the Izaak Walton League of America.

By CLAUDIA DEL GUIDICE

On May 28, 1981, Gov. Jay Rockefeller signed into law the state's Hazardous Waste Management Act. This landmark piece of legislation was designed to give the state control over the storage, transportation, treatment and disposal of hazardous waste. Furthermore, the state, once regulations have been issued, can take over the primary role in enforcing the Resource Conservation and Recovery Act (RCRA) presently administered by EPA.

While the act is complex -- for example, it gives six different state agencies power to regulate some aspect of hazardous waste disposal -- there are a couple of areas that are of particular interest to citizens.

First, if a company wants to construct, operate or close any disposal site, he must get a permit from the Department of Natural Resources (DNR). If the site is considered a major facility, a detailed environmental analysis must be submitted with the application. This would include at least the following: what types of quantities of waste will be disposed of; what method of transportation will be used and the potential impact; the effects that the site will have on air and water quality; what steps will be taken to minimize any adverse impacts; the expected charge for disposal; a post-closure plan (what will be done after the facility is closed); and what are the qualifications of the owner and operator.

Once the permit is applied for, an advertisement will be placed in the local newspaper as well as on the radio, and notice will also be given to local governments. If the DNR receives written

opposition to the proposed plan, they will hold a public hearing near the proposed site.

Anyone who doesn't like the decisions that the DNR makes can appeal to the Water Resources Board and then to the Kanawha Circuit Court.

Citizens also have the right to bring suit against a company which violates the permit conditions, and citizens can bring a suit against a rule-making authority. The penalties in the law should greatly help enforcement of the law and regulations. The most severe penalties are for someone who knowingly places another person in imminent danger of death or serious bodily injury. If convicted, the person would face a fine up to \$250,000 and a prison term of one to four years.

Other penalties include: for falsifying records, fines up to \$25,000 and, for a repeat offense, fines of up to \$50,000 and prison terms from one to three years; for transporting any hazardous wastes to an unlicensed facility or operating a facility without a permit, or knowingly violating a major condition of the permit, fines up to \$50,000 for each day of the violation and a prison term of one to two years.

One final section of the law that is of particular interest to citizens relates to deeds. Anyone selling land that was once used as a hazardous waste disposal site must alert the new owner of the types, quantities, and method of disposal of the waste. Additionally, anyone wanting to buy property to be used as a hazardous waste disposal site must disclose his intentions to the person from whom he is buying.

Other sections of the new state law include provisions for: -- the DNR as the state's lead agency for hazardous waste management.

-- the DNR director to

integrate all provisions of the law for purposes of administration and enforcement with the provisions of other state environmental statutes. -- the publication of a study of hazardous waste management in the state within 12 months after the law goes into effect. The study will include an inventory of existing and abandoned hazardous waste sites.

-- the DNR director to serve as a rule-maker in tandem with other state agencies.

-- the water resources division chief to be the major permitting authority.

-- any person who constructs, modifies, operates or closes a hazardous waste facility to have a permit. Major facilities will be required to submit an environmental analysis with their permit application. Environmental analyses will contain information concerning environmental, technical and economic factors involved in establishing and operating facilities.

-- extensive public participation in the permitting process. It requires notices of permit issuances to be broadcast on local radio stations and requires notices to be sent to local governments. If written notice of opposition to a permit is received within the 45-day period, a public hearing will be held.

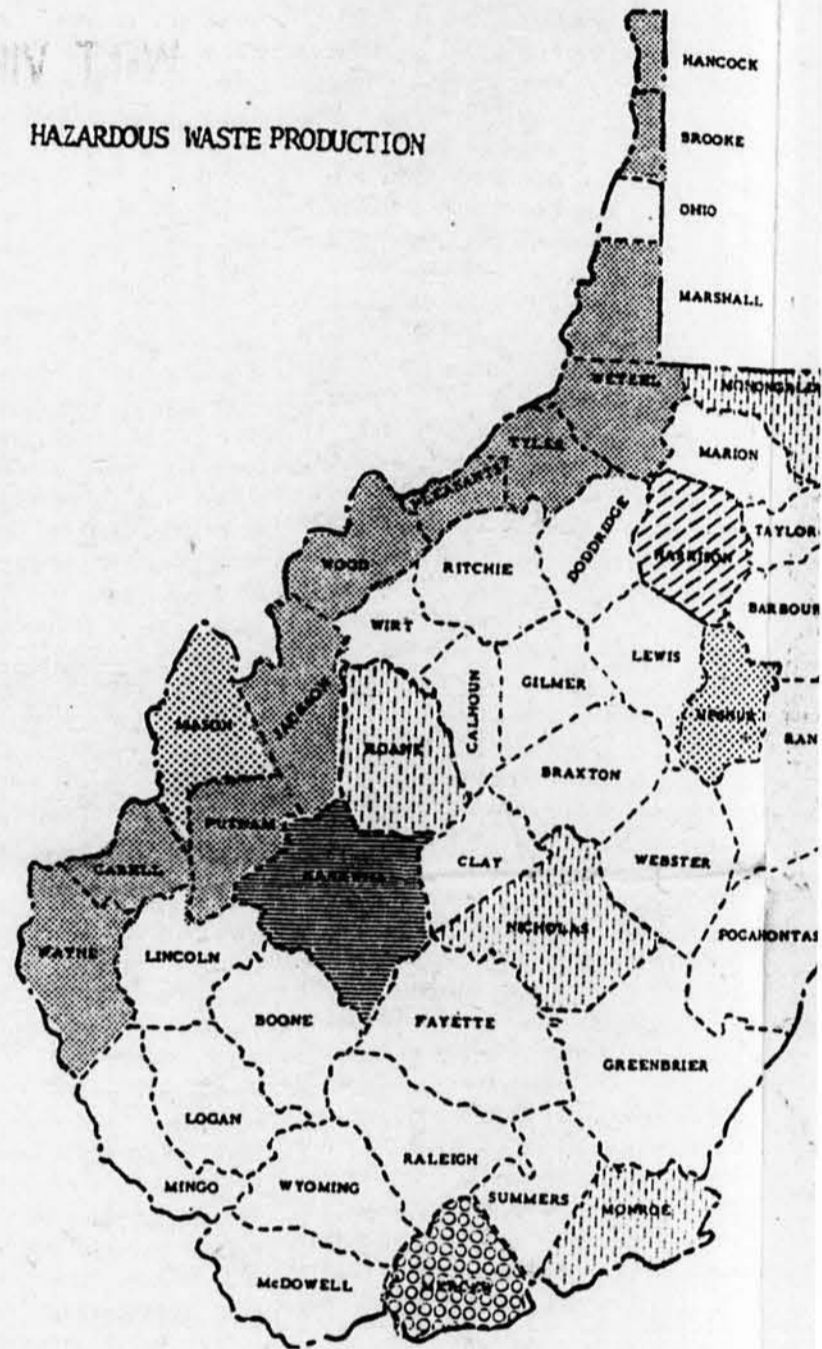
-- a transition program for existing facilities which are in compliance with interim status requirements of RCRA.

-- information obtained under the law to be available to the public unless certified by the DNR to be confidential.

-- inspection authority to be granted to the chief of the DNR with the right to take samples and have access to all records relating to the storage, treatment or disposal of hazardous waste.

-- the chief of the DNR to require owners or operators of hazardous

waste disposal facilities -- the chief and other agencies involved to conduct monitoring or testing if the chief has information that a hazardous waste may present substantial danger to human health or the environment. -- the chief and other agencies involved to sue orders requiring compliance, including suspension, revocation or modification of permits, or cease and desist orders.



The West Virginia Citizen Action Group, will be sponsored by the Izaak Walton League of America, will be sponsored by the state to inform citizens, local officials. The topics to be presented include: What hazardous wastes are being produced in West Virginia? What are the past, present, and future of hazardous waste disposal? How can citizens be better informed? The workshops will be held in the following locations:

Meetings

FAIRMONT	Sept. 12	YWCA
WEIRTON	Sept. 19	Millsop Center
CHARLESTON	Oct. 10	St. John's Episcopal
PARKERSBURG	Nov. 7	Wood County Public Li

Superfund

By PERRY BRYANT

While the Resource Conservation and Recovery Act of 1976 is attempting to ensure that future disposal of hazardous waste is done in an environmentally sound manner, the so-called Superfund legislation is aimed at cleaning up hazardous waste disposal sites which pose an immediate hazard. Monies from Superfund can be used to clean up both abandoned and existing disposal sites.

Passed on Nov. 20, 1980, the Superfund legislation was originally to have funding of \$4 million; however, following the election of President Reagan and the Republican sweep of the Senate, a compromise was worked out which reduced the funding of the Act to \$1.6 million.

Actually, Superfund is two separate funds. The response fund is the part of the Act that most people are familiar with. There is another fund established under Superfund, the "past closure fund."

The response fund can be used to clean up releases of hazardous waste if the responsible person fails to clean it up, or if no responsible party can be found.

There is a strong incentive for responsible persons to clean up any release under Superfund. If the responsible persons fail to clean up the site and later are found to be liable, they can be sued for reimbursement for the clean-up, plus punitive damages of up to three times the cost of clean-up.

The funding for the response fund comes from three different sources. Coming from industry will be 87.5 per cent, drawn from a Congressionally-imposed special tax on imported crude oil and one on producers of chemicals. The remaining 12.5 per cent will come from two sources: half from monies collected by the federal government for oil spills and the other from appropriations

out of the nation's general revenues.

According to an EPA spokesperson, the funding for this year under the response fund will be \$68 million. (The federal fiscal year runs from Oct. 1 through Sept. 30). Of the \$68 million, \$59 million will come from industry, while \$9 million will come from the federal government.

The Act makes the following persons liable for the cost of cleaning up a site: anyone who transported or arranged for transportation or anyone who owns or operates the disposal site.

These persons will be liable not only for the cost or removal or remedial action taken by the government, they will also be liable for any feasibility study conducted by the government.

Finally, these persons will also be liable for injury or destruction of a natural resource, if the injury occurs after Nov. 20, 1980. Conceivably, this could mean that an owner of a disposal site which has contaminated groundwater supplies would be liable to replace the lost groundwater supply.

The Act establishes three exceptions to these liabilities. They are: a) an act of God; b) an act of war, and c) the acts of a party where it can be established that the other person took reasonable care (considering the nature of the hazardous waste) and that he took precautions against the foreseeable results of the actions of the third party.

The second fund established under the Act, the post-closure fund, is designed to take care of facilities after they are closed.

The post-closure fund applies only to those facilities which have been permitted under RCRA. The owner-operator of these facilities must monitor his site for five years after the facility has been closed.

If, after five years of monitoring, there is no sign of contamination or

migration of wastes off-site, the owner-operator notifies the EPA. The EPA has 90 days to determine whether, in fact, the facility has met all conditions for closure.

Once EPA certifies that the site has met all closure conditions, EPA assumes all liability for the facility. Liability can include claims made against the site as well as any additional monitoring and maintenance of the facility.

Unlike the response fund, the post-closure fund is supported entirely by hazardous waste disposal facilities. These facilities will pay \$2.13 per dry ton of waste which is left after the facility is closed. The total amount of the fund is expected to be \$200 million.

Perhaps as important as the creation of these two funds, Superfund also requires that individuals report on past disposal practices. The Act requires that anyone who owned or operated a facility, or anyone who transported hazardous substances to a facility, or anyone who selected the site for disposal of hazardous substances has to notify EPA.

In notifying EPA, these individuals must specify where they put the hazardous waste; what wastes are there, and in what quantity; and any known or suspected release of the wastes from the facility.

To get this valuable information, Congress used a "carrot and stick" approach. The stick included a possible fine of \$10,000 and one year in prison for persons who knew they should supply the information and didn't.

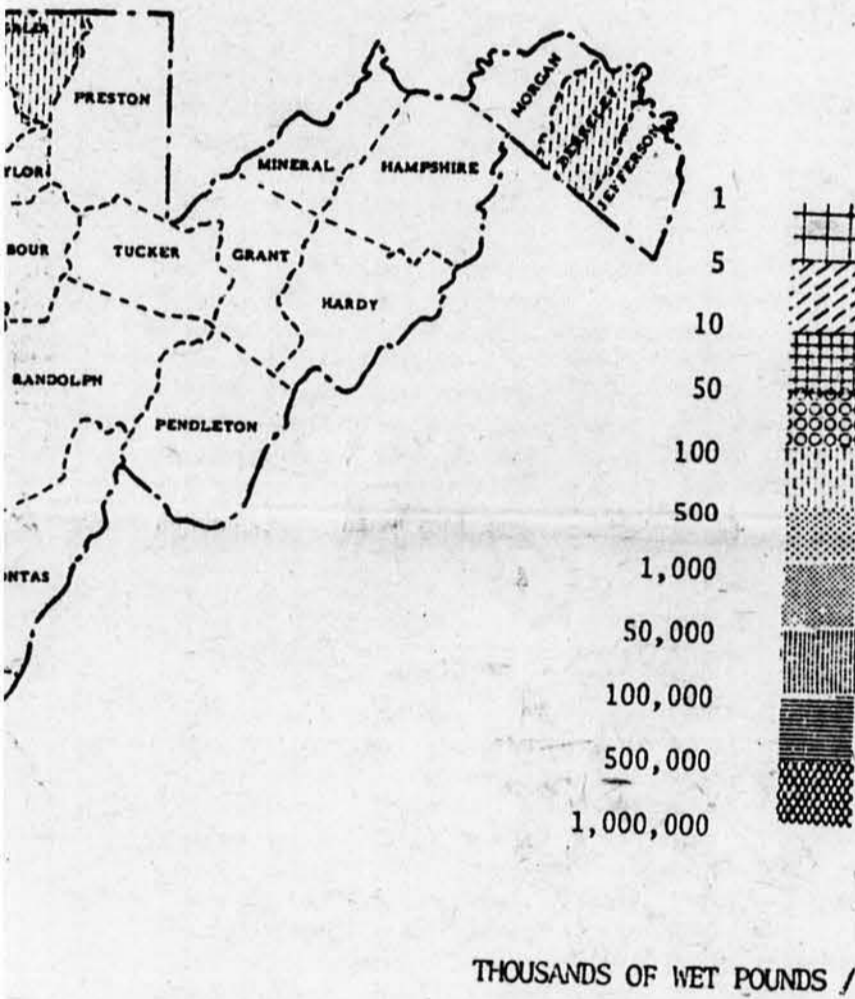
The carrot included granting the exceptions to liability (remember the act of God, the act of war or acts of a third party). Anyone who doesn't report to EPA isn't eligible for these exceptions. Also, Congress promised that any information supplied to the EPA would not be used in a criminal suit.

disclosure in deeds and lease of hazardous waste activities. Disclosure is required during all deed transactions by sellers and buyers who have either used the land to store, treat or dis-

pose of hazardous waste. -- all fines, penalties and bond forfeitures collected under the law to be appropriated for administration and to set up the Hazardous Waste Management Fund.

WEST VIRGINIA

SCALE
0 5 10 20 30 40 MILES



Group, through a grant from the Izaak Walton League, is sponsoring a series of workshops around the state, and others about hazardous waste. What wastes are considered hazardous? What wastes are produced in West Virginia and in what quantities, and future disposal practices in West Virginia? How do federal laws and regulations governing hazardous waste disposal affect West Virginians? How do they have input? At the following locations:

- 1 p.m. to 5 p.m.
- Community 1 p.m. to 5 p.m.
- 1 p.m. to 5 p.m.
- 1 p.m. to 5 p.m.
- County Library 1 p.m. to 5 p.m.

Mower and the Fork

Continued from page one

Less than a week after the judge issued his decision, the "war" suits for fear of having been engaged again -- this time from a different front, the water resources division of the W. Va. Department of Natural Resources.

Six warrants charging Mower's operating arm, Enviro Energy, Inc. with unlawful and negligent pollution of the Fork were issued in early August based on complaints filed by three state wa-

ter resources inspectors. Each of the six warrants could carry a maximum penalty of \$10,000 -- and a minimum of \$2,500 -- if the company is found guilty.

The warrants alleged that the pollution has been occurring ever since late February, specifically, on Feb. 24 and 26, April 15 and 17, June 22 and, most recently, on July 10.

The warrants were issued by a Randolph County

magistrate based on complaints filed by Martin Tighe, Donald K. Sharp and Hayes Johnson. Each alleged that the firm did "unlawfully and negligently . . . discharge . . . iron-laden water in excess of that allowed" by the permits for two of their mines.

what the appeal alleges as fact: that Boggs' decision was based on incomplete information, information which Mower refused to provide to the U. S. Geological Survey -- the agency from which OSM staffers got their basic information about the underlying geology of the area.

Back in Morgantown, McGinley said that the documents suggest Mower on a number of other fronts as well. A lawsuit is currently in Mower's federal court in Washington seeking to overturn the U. S. Office of Surface Mining's appeals board's refusal to halt Mower's progress on the Shavers Fork. The Con-servancy had earlier tried to halt the mining with an injunction federal court in Elkins -- a suit which resulted in Mower's scramble for attorneys' fees.

is supposed to have been based.

Also on appeal to OSM's board of appeals is the agency's decision to permit mining throughout the watershed, a decision rendered by Patrick Boggs of Charleston, the director of the regional office. McGinley has indicated he has great hopes for that appeal because it is based on the file," he said.

Continuing Battle

Continued from page eight

of the Act will be declared unconstitutional. There are almost certain to be individual challenges to the act. However, the Supreme Court has charted out the major parameters of the act and taken the wind out of the sails of those attempting to gut the act through constitutional challenges. That simply will not occur now -- the Supreme Court has ruled and that's it.

B: So that should have been the end of that?
G: Unfortunately not. There have been many other legal challenges in almost every possible form.

B: What have been the most important?

G: The most important, after the Supreme Court, are the challenges to both the interim regulations and the permanent regulations. These regulations form the heart of the program and the coal operators and states challenged over 100 different regulations, to give you an idea of the breadth of their attack. They prevailed on some, but they lost on the overwhelming majority, and the integrity of the program survived. Not content with that challenge, the operators instituted any number of other challenges in various local federal district courts over a variety of issues. For example, the operators have sued to delay implementation of federal programs or implementation of the approved state programs. In West Virginia, as well as other states, court injunctions were granted which pre-

vent the enforcement of the state program for a period of a year.

B: I gather that the other major assaults on the act are coming from the Interior Department, from Mr. Watt himself, and he has recommended major surgery on the regulations. Of these changes, which do you think are the most damaging from the point of view of West Virginia?

G: Well, Secretary Watt is proposing nothing less than a total emasculation of the regulations in almost every significant area. His changes would apply to enforcement, inspection, designation of lands unsuitable, any number of performance standards, valley fill, roads, backfilling and grading, wildlife protection. As far as we know, he hasn't missed a single important area. All one has to do is look at the index for a topic and you can rest assured he is attempting to weaken it in some significant way. So, it is hard to pick out the ones that would hurt West Virginia since his changes would involve such a fundamental alteration in the operation of the entire act.

B: But isn't that illegal? Can you change the thrust and purpose of a federal statute by changing the regulations that are designed to implement the statute?

G: The answer varies from issue to issue. By and large, the position of the environmental groups and the citizen groups that I represent is that the majority of Secretary Watt's proposed

changes are illegal because they contradict the purpose of the statute. If he persists in these changes and promulgates them as revised rules, we will challenge him in federal court in Washington as provided under the statutes. It will then be up to the Court to decide what the Act intended.

B: Do you have a prognosis?

G: It is impossible to tell. A lot depends on whether Watt will show any degree of reasonableness and retreat from some of his more extreme positions. It is simply too soon to tell. A lot depends on the role his lawyers play -- if they tell him his proposed actions are illegal and he must step back.

B: Let me ask one final question from a different perspective. Since the act was passed, is there any solid evidence or indication that the destruction of the land has been less than otherwise would be the case? Is there any measurable way to argue that the act has been effective in achieving its purpose? Or is the time frame too short?

G: Well, I am sure you would find disagreement on the impact of the act; and there has been no systematic study on this question. It would be a very complex thing to do. Tracing honestly and accurately the impact of any regulatory effort is an extremely difficult analytical task. So one attempts a much cruder form of measurement. For example, the federal in-

spectors who day in and day out go in and look at mines will tell you that there is a significant difference and that there has been a tremendous improvement in areas like eastern Kentucky, for example. We are told that there are many fewer cases of spoil on the down slope, which has been the single most egregious violation, and that operators are controlling their sediment loads much better. So, I think that a neutral person would say that there has been significant progress. Progress is spotty however because of inconsistent enforcement. But overall we believe the act has improved environmental protection tremendously without any significant impact on coal production or the capacity of the U. S. industry to produce coal.

B: But don't the added costs of reclamation put a financial burden on the operators?

G: This dispute centers on the impact on the in-

which pre-

Canaan

Speedy Development Threatens Valley

By LINDA ELKINTON,
W. Va. Audubon Society
and JENNI VINCENT,
President
Canaan Valley Alliance

Given the Reagan administration's aversion to federal land acquisition and the direct role Secretary of Interior Watt played in the licensing of the Davis Power Project proposed for Canaan Valley, questions have arisen as to whether protection of the Valley as a National Wildlife Refuge can now be expected.

While recent weeks have seen a change in Watt's demeanor in regard to the destruction of some of the country's most valued resources (i.e., the California coast, acquisition of wetlands with certain earmarked funds), those closest to the Canaan issue seem not so much concerned with whether Canaan will be protected but rather if such protection can be achieved before the Valley's unusual qualities are compromised.

It's not so much the power dam that worries them -- although that's not totally out of the picture -- but instead it is the increased pace of other development in the Valley which bodes ill for its overall character. Construction is now underway on the Valley's first full-scale condominium, and a massive ski resort with an additional 1,000 condo units is in the works. The commercial development continues to spread unabated along Route 32, and Allegheny Properties has recently opened up another large section of their holdings for second homes.

In an effort to deal with the situation, the regional planning and development council in Virginia's Congressional cooperation with the Tucker County Commission has begun work on yet another formal land use plan for the Valley. As currently envisioned, the

goals of the plan are to protect the Valley from haphazard development and insure the preservation of its unique qualities. However, the county government's support for the plan is ultimately conditioned on the proviso that the Davis Power Project will definitely be constructed. Ironically, that is the one plan which would, in one fell swoop, destroy more of the Valley's resources than all of the other present plans combined.

This is the third overall plan to be undertaken for the Valley in recent years, and while it is desperately needed, much skepticism exists as to whether this one will get any further than the last two.

On a more positive side, the new study has confirmed that local sentiment for the refuge is about equal to that for the power project, a hitherto unconfirmed supposition of interest to many. Although it has taken a while, some local people are finally beginning to consider the Canaan predicament as they see the results of increased speculation.

The entire matter again points to the need for speedy establishment of the Canaan Valley National Wildlife Refuge as the plan best suited for overall protection of the Valley. But the search for an even better management alternative continues by those who can not tolerate the thought of further government land acquisition even when, as in this case, it would be of great economic benefit to the local area.

KEEP THE CARDS A-COMIN'

Despite the proclivities of the new administration, members of West Virginia's Congressional delegation as well as important governmental agencies are finding the issue of Canaan's protection virtually impossible to shake. And evi-



A Four-Foot Tall
Great Blue Heron
Visits Canaan

dence exists to suggest that this may not actually be the intent of some of them. It does not appear that Senator Robert Byrd had difficulty looking for the proper location for his October Democratic Senators' retreat.

With newly-elected Second District Congressman Cleve Benedict, the story is different. He reports that since in Washington he has met twice with Secretary Watt in an effort to revive the DPP and believes the chances of its being built have improved under the Reagan administration: "Now there is a group of people at Interior who understand some of the advantages of the project and are more attuned to PRODUCING ENERGY IN AN ECOLOGICALLY ACCEPTABLE FORM . . . a fundamental shift in attitude from the previous administration . . ." (emphasis added -- would that it were true!)"

WHERE'S THAT DOE REPORT, ANYWAY?

As for the long-awaited DOE report (the one our elected representatives have been waiting for -- as they've said in their

letters -- before making a final decision on Canaan), it now appears it will never see the light of day. Judging from the draft report and discussions since its completion, DOE may have done too good a job of pointing out both the reduced need for additional generating capacity and viable alternatives to the Canaan dam. So, partly because of the radically altered political climate and partly because of the damage the report would do to the prospects for a future revival of the project, the final report will not be made public. Instead, one copy of the final consultant's report will be put on file at DOE for all who may wish to journey to Washington to see.

Besides its cost (some \$500,000 in all), it is regrettable that the interested public has been deprived of this decent, factual report on which to further consider the merits of the Davis Power Project. There is one positive feature about it: at least our political representatives can no longer use it as a convenient excuse for their inaction on protection of the Valley as a refuge.

So far as Interior's action on the refuge is concerned, with James Watt at the helm, we're talking about a new ballgame. (Perhaps not for too long, though. Send in those petitions, folks!) Watt has already achieved true infamy for his anti-environmental policies, but of even more significance in the case of Canaan, it was he who, as a Federal Power Commissioner in 1977, not only wrote the license for the power project but was also its strongest advocate on the Commission.

Despite his previous involvement and present opposition to further federal land acquisition, or perhaps because of

them, all is quiet at Interior with regard to Canaan. It remains to be seen whether he or Congress will have the last word on the Land and Water Conservation Fund, the funds with which the power company's land in Canaan are to be purchased under the refuge plan.

APS IS NOT GIVING UP

Although APS has decided to make use of the Bath County pumped-storage facility, they continue to insist that the Canaan power dam will be needed on down the road and that they have not given up on it. No doubt they will make good use of the time between now and 1990 (their NEXT predicted time of shortage) to "discover" even new and better ways to justify destroying the Valley's wetlands.

Technically, the project remains legally entangled. In December 1980, the D. C. District Court sent something less than Christmas cheer concerning the Section 404 wetlands permit denial case which APS had appealed.

The December decision stated that the Corps was without jurisdiction to either grant or deny a permit for the Davis project because the project had been previously licensed by the FERC which has exclusive jurisdiction over such projects. But if such a ruling as this were let stand, the Corps' control over wetlands nationwide would be jeopardized. As a result, environmental groups as well as the Corps itself have appealed this ruling to the U. S. Court of Appeals. No date has yet been set for arguments in this case.

Meanwhile, the appeal by Interior, WVHC and other environmental groups of the FERC license for the power project remains pending in this same court.

Washington

The Continuing Battle Over Strip Mining

EDITOR'S NOTE: Tom Galloway, a Washington attorney with the Center for Law and Social Policy who has been deeply involved in mining issues, was interviewed by the Conservancy's Washington vice-president, Stark Biddle.

Galloway is the author of more than 20 amendments to the Surface Mining Act. He was in the center of the battle over passage of the Act in 1977 and has worked with and represented citizen and environmental groups in efforts to preserve the basic intent of the legislation.

Here, for the delegation of the Conservancy's members, he talks about the wide-ranging attacks on the Surface Mining Act and about the problems of implementing it.

Biddle: Tom, maybe you can give us some background history on the Surface Mining Act and tell us a bit about its passage and some of the issues that were debated at the time it was passed.

Galloway: The Surface Mining Act of 1977 had its genesis in the decade of the 1960's. In the 60s there was a tremendous increase in the amount of coal extracted by surface mining methods in the Appalachian states -- West Virginia, Kentucky and Virginia. There was very little state regulation at the time and no federal regulation at all. Mining practices varied from state to state, but generally there was widespread abuse of the land. The method of mining often used was what is called "blast and shove." The soil and rock that overlies the coal is blasted and pushed over the mountainside. That results in landslides, heavy sedimentation of streams and a tremendously adverse impact on the residents who live below. In reaction, citizens began to form action groups organized around strip mining issues in the various Appala-

chian states. They began to take action; actions ran extremely high; there were instances of Appalachian citizens lying down in front of heavy machinery to stop the mining; there were numerous confrontations at mine sites between local people and the operators. The immediate result of all this was a series of state laws which, generally speaking, were quite weak and did not end the abuse. As surface mining increased, the number of people affected by the activity increased and the subject began to receive federal attention.

B: But it took a long time for the law to be enacted, as I recall.

G: It certainly did. Surface Mining was a major issue in the United States Congress from 1970 to 1977. It received as much attention as perhaps any other environmental statute, including clean air and clean water. It was passed twice by Congress and vetoed twice by Republican presidents. It was passed a third time in 1977, and finally signed into law by President Carter who had campaigned on the promise that he would in fact sign a strip mine law.

B: Now that the act has been passed, as I understand it, the real heart of the act is in the implementation state-by-state. Do you have a view on how West Virginia has done in terms of implementing the provisions of the Act?

G: West Virginia, in my view, has a mixed record. To be fair, we need to remember that West Virginia had a bit of a head start over the other Appalachian states with the exception of Pennsylvania, so I guess I tend to expect more. Before the federal act was passed, West Virginia had passed a state law which, while it contained weaknesses, nonetheless was a legitimate attempt to regulate mining. The West Virginia coal industry by and large had responded

to that statute and had improved their mining practices quite significantly. Now obviously there were numerous exceptions to this, but generally the mining in West Virginia did not have the gross, adverse environmental impact of, say, the mining across the border in Kentucky or Virginia. That is not to say it did not have significant adverse impact, but compared to the abuse in Kentucky and Virginia, the West Virginia coal operators were certainly conducting themselves more responsibly. In fact, ironically, West Virginia supported the passage of the federal act on the premise that is coal operators were at a competitive disadvantage since coal can be mined much more cheaply when you are simply pushing the overburden over the side of the hill and not engaging in other practices which are necessary to contain the environmental impact. So you see, West Virginia started from a somewhat higher base.

West Virginia does not believe in mandatory enforcement

B: So you'd give them pretty high marks?

G: Well, I guess it depends on your perspective. In general, we do not believe that the state of West Virginia -- or the federal Office of Surface Mining for that matter -- has enforced the provisions of the interim program as strongly as they were intended to be enforced by Congress. For example, in the case of the surface impact of underground mining, West Virginia has resisted aggressive enforcement, and that is a major issue. There are also significant issues over the way mountaintop mining is done. West Virginia was a pioneer -- if that is the correct word -- in the removal of the tops of mountains and the placing

of the tops of the mountains in the valley in an attempt to remove a larger amount of coal. The disputes with the state have concerned what you do with the top of the mountain. Technically, that involves the construction of what we call a "valley fill". Again, to be fair to West Virginia, while there are significant issues, they are not as serious as those raised by the valley fill techniques used in the states of Kentucky or Virginia.

We also believed that what West Virginia has not adopted in practice a strong enforcement system, although it has one in law. The state simply does not seem to believe in mandatory enforcement and consequently the Act was not enforced adequately in any number of situations. Another problem we have with the West Virginia programs concerns the supervisory board. It is what is called a "mixed board" which means it has coal interests as well as other interests repre-

rules on what we call "adjudication" questions under the state program. That is a major issue yet to be resolved.

B: At the federal level, I gather there have been, since passage of the Act, a variety of assaults on the act. Starting with the attempt to declare the act unconstitutional. Could you give us a little bit of background on that? I understand the Supreme Court has ruled that the Act is in fact constitutional. But perhaps you could give us some background on the issues and whether we can expect any additional Supreme Court challenges to the act.

G: Well, since the act was passed, the coal industry and a number of the coal producing states have tried every possible legal device to gut or dilute the program. They have challenged a number of the most important provisions in the U. S. Supreme Court, including such things as enforcement provisions, designation of lands unsuit-

able for mining, the requirement to return the land to approximate original contours -- which is very important in West Virginia -- and the return of prime farmland to full productivity, to mention a few of the issues raised in the Supreme Court suit. The industry suffered a resounding loss. They lost in the Supreme Court on every issue by a 9-0 vote. It's almost impossible to lose any more badly than that. The Court, while it ruled on the issues in front of it saying that all these provisions were constitutional, could not rule on issues not contained in the suit. So there is still a slim chance that some untested provision

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