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House bill to protect waterways

Legislators want to prevent fish kills

BY DAVID BEARD The Dominion Post

COMING THIS WEEK: A look at other legislation proposed to help ward off fish-kill disasters, and the state Department of Environmental Protection's take on the issue. HOUSE passes ethics bill. Page 1-D.

CHARLESTON — Area legislators said another fish-kill disaster like Dunkard Creek is on the horizon, and they are working to produce laws to protect state waterways.

One of those efforts is House Bill 4001, created and co-sponsored by local delegates, and the first House bill introduced during the 2010 session.

"We need to work quickly to establish reasonable rules so that industry can still operate, but we don't have that risk of having complete and utter devastation of another watershed," said Delegate Alex Shook, D-Monongalia.

"We've got all of the interest groups involved," he said, including the Department of Environmental Protection (DEP) and coal and natural gas companies, "to try and work out a reasonable solution to prevent the type of tragedy we had on Dunkard Creek."

HB 4001 would amend the existing Water Pollution Control Act to enable the DEP to develop standards to control levels of total dissolved solids (TDS) in state waterways. It would require mining, gas drilling and other industries to conform with those standards for discharges into waterways.

The DEP and U.S. Environmental Protection Agency (EPA) have said the Dunkard fish kill was caused by a bloom of golden algae — *P. parvum*, a plant that thrives in salty water and produces a toxin that can kill fish, mussels and salamanders. Chloride, a component of salt, is also an element of TDS.

The EPA said high levels of TDS can affect golden algae's toxicity, and high TDS levels themselves can kill aquatic life.

"We believe control of TDS on Dunkard Creek and other watersheds is the best solution to control *P. parvum* blooms," says a November EPA report.

Controlling TDS, legislators said, means controlling discharge from coal mines, gas wells and farms.

The bill would also require gas companies to reveal the components of their "frac fluids" — water mixed with sand and additives used for fracturing rocks to extract gas — so the DEP can trace spikes in pollution.

A DEP report shows 21 streams with high TDS levels. Legislators said about five or six of those — apart from Dunkard Creek — already have golden algae, including Cabin Creek in Kanawha County. The EPA report says, "Once *P. parvum* is established in a watershed, it is difficult to eradicate and is essentially there to stay."

With that in mind, legislators said they feel a sense of urgency to get something done.

"Cabin Creek is the next disaster waiting to happen," Shook said.

Delegate Bob Beach, D-Monongalia, agreed, noting that summertime — when water temperatures are higher, and water flows are lower, making TDS more concentrated — is approaching. "We are looking at another disaster at some point."

Delegate Barbara Evans Fleischauer, D-Monongalia, is the primary sponsor of HB 4001. She and others noted that there are some obstacles to getting a bill passed. Not everyone in the Legislature understands the extent of the kill, or that the expansion of golden algae makes it a statewide issue.

"I think there's a lot of education that needs to go on," she said. "We have to get our membership with us. I'm not sure they're

there yet.”

Beach said they have met with the governor and the DEP to look at legislation.

Gov. Joe Manchin's spokesman, Matt Turner, said, “The governor understands the concerns with TDS, and we certainly want to do what is feasible to prevent a situation like that of Dunkard Creek from occurring again there, or in any of our other streams. So we'll be working with DEP and the legislators to determine what steps need to be taken.”

DEP spokeswoman Kathy Cosco said the agency has worked on the issue for at least a year. The issue is on the agenda for consideration in the triennial review of the state's water quality standards by EPA. “This would put DEP in a position to propose a standard for consideration by the 2011 legislature. We have been discussing TDS with the legislative water resources committee for more than a year, as well as constituents from the Mon River area over the last several months.”

Delegate Mike Manypenny, D-Taylor, co-sponsored HB 4001. One of the reasons the legislature wants to track frac fluids — in this bill and another being drafted by Delegate Tim Manchin, D-Marion, chair of the interim Water Resources Committee — is that “we think there could be a lot of illegal dumping.”

He echoed statements made by public officials that residents have seen trucks — possibly from gas drilling contractors — traveling down side roads, possibly to dump polluted frac fluid into streams.

The concern with farms, he said, is that fertilizer-laden runoff can enter streams and help build TDS levels. Because farming is so economically challenging, he said, he wants to produce legislation that's the “least harmful to [the] agricultural community.”

Some gas companies, he said, send their frac fluids to treatment plants — there's one in Fairmont — to get cleaned up before it's released back into streams and rivers. But there aren't many around and the Fairmont plant is booked solid. So the Legislature needs to “create a business environment to make it more hospitable to build treatment facilities.”

Manypenny noted that coal and natural gas are important to West Virginia's economy, and a key to any legislation will be balance.

