

Disaster on the Elk River

Two press conference visuals have become all too common this century. The first is the humiliated wife standing next to her two-timing, office-holding husband as he seeks public redemption. The second is the corporate leader who seems bewildered by public anger over his firm's latest environmental disaster.

Three minutes into January's press conference about his company's ruptured chemical-storage tank near Charleston, W.Va., Freedom Industries president Gary Southern had become agitated. He was chugging a bottle of Aquafina and complaining to reporters that he was having a long day—much as BP's Tony Hayward once grouched about wanting his life back. A member of the press tartly reminded Southern that his day hadn't been nearly as long as the 300,000 people who were now without potable water thanks to the leak, which had left much of the Kanawha River Valley smelling oddly of penny candy.

As a free-market environmentalist (yes, we do exist; we hold our annual conference in a mini-storage unit), I keep thinking it should not have to be this way. Some economic force should be able to tap these CEOs on the shoulder and say “think,” before bad behavior leads to another catastrophe.

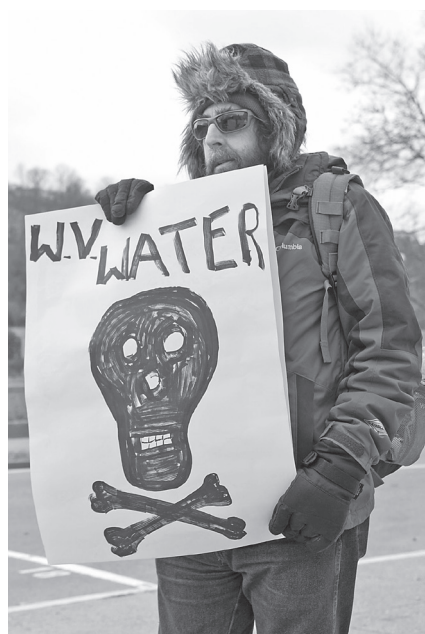
Freedom Industries, which filed for bankruptcy before the spill had cleared the Elk River, took the pro-wrestling defense, contending that a “foreign object” had somehow been “frost-heaved” through one of its tanks. The *Washington Post* described the tanks as “vintage,” like the rusted-out tools that people hawk on eBay. Obviously, this was a catastrophe waiting to happen.

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At the moment, it isn't the spill that has me rankled. It's the fact that these things happen so often in my home state of West Virginia, be they chemical spills, explosions, or mining disasters. After each one come the snarky comments and Tweets that West Virginians somehow deserve the disasters because they elect anti-regulatory candidates to office. (Never mind that Democrats have long dominated the governor's mansion, state legislature, and congressional delegation.)

West Virginians, it's true, are among the most liberty-loving people in the nation. It's in the state motto: “Mountaineers Are Always Free.” West Virginians do not want President Obama shutting down the coal industry, and they won't accept a thick new book of regulations governing chemical plants. That's especially true if the regs mean the loss of those enterprises and their jobs. For too many West Virginians, work is scarce.

But it's more than that. West Virginians fear that if you start telling companies what to do, soon you'll start telling people what to do as well. We're not into that. We're not bad stewards of the beautiful land within our boundaries, but ...



well, it's complicated. We grouse about the litterbug, but we won't write down his license-plate number or turn him in.

To me, that's not an attitude that should be condemned. But it doesn't seem right that we need to choose between freedom and the environment. The phrase is “liberty and justice for all,” after all, so can't we have accountability without command-and-control regulation?

Consider, for instance, what might happen if Freedom Industries couldn't slough off liability through bankruptcy and other legal maneuvering. Suppose that, in order to set up shop, an industrial firm had to deposit enough funds in a state account to cover potential environmental damages in excess of the firm's value. Or suppose the firm had to purchase and maintain a catastrophe bond large enough to cover such damages. Those requirements would give the firm plenty of incentive to watch over its chemical storage tanks and to publicly disclose and begin containment work immediately after an accident, instead of sitting on that information for hours. And the firm would have long ago compiled information on what chemicals it stores (instead of taking days after the accident to gather that information, while downriver waterworks continue to draw in tainted water).

The question is, what is enough coverage to protect against such accidents, or what is the right amount of money that should be deposited? On the other hand, how helpful are regulations when an old tank of noxious chemicals becomes forgotten?

Requiring firms to bear the costs for all the risks they pose may not be the magical policy solution to remedy all environmental accidents. But it may have made Freedom Industries more likely to keep an eye on its tanks and make full and timely disclosure when something went wrong. It may have even saved the company from bankruptcy. And it could have prevented the blogosphere from going all holier-than-thought on us West Virginians who—thank you very much—have enough problems to worry about. R