

## FEBRUARY 2014

### ***What the Supreme Court has—and hasn’t—changed.***

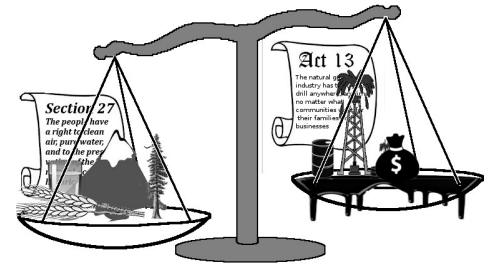
HARRISBURG: The recent ruling by the Supreme Court of Pennsylvania, in *Robinson Township v Commonwealth of Pennsylvania*, was a powerful affirmation of the right of citizens to control fracking in their communities. Still, while we’ve been handed a strong legal tool, it remains for us to put that tool to work, because the frackers aren’t about to walk away from our state. They’ve spent too much money and have too much of their own survival at stake to go quietly.

The Court ruled clearly and decisively to overturn the Commonwealth’s presumption of power over local zoning, but it left big parts of Act 13 standing. And immediately, the fracking industry’s legal and public relations workforce began prying

away at any possible gaps or ambiguities in the *Robinson* ruling, trying to gain by obfuscation and intimidation what they had hoped to secure through legislation.

In interpreting our state’s Constitution, Pennsylvania’s Supreme Court is, in fact, supreme – there is no route of appeal. So, instead, fracking’s supporters in state government have petitioned the Court itself to “reconsider” its decision, disputing the Court’s reasoning and raising new “factual” claims (which it hadn’t chosen to offer at trial).

As a legal maneuver, the Commonwealth’s petition has almost no chance of success. As public relations, however, it works to keep a cloud over the *Robinson* decision, buttressing an industry posture that the matter is still not “settled law”. And, politically, the state’s Republican leadership – who were re-



cently rebuffed in their attempts to join the case on behalf of Act 13 – can spin the Commonwealth’s arguments to both benefit from, and to inflame, the anti-judicial biases of its “base” constituency.

Meanwhile, the Corbett administration does its best to pretend that the Court hasn’t spoken. For example, the Environmental Quality Board continues to hold hearings on its draft regulations – regulations based upon provisions of Act 13 that the Supreme Court has struck down. [This strategy is consistent with the industry’s conduct in other legal proceedings. See our Page 2 story, on the case of *Voyles v. Pennsylvania DEP.*]

(Continued on Page 2, **ROBINSON**)

***“Development of the natural gas industry ... unquestionably has and will have a lasting, and undeniably detrimental, impact on the quality of those core aspects of Pennsylvania’s environment which are part of the public trust.”*** (from the Pennsylvania Supreme Court ruling)

### ***No, No One Would Do That! Would They?***

CHARLESTON, WVa.: As drinkable tap water began to be restored to the 300,000 residents of this river valley, the New York Times added some perspective on the relative standing of Charleston’s human and corporate inhabitants.

Freedom Industries, which spilled “crude MCHM” into Charleston’s water supply, isn’t in the fracking business; it operates in the supply chain of mountain-top removal. But, in addition to reminding us of the fragility of our rivers, this spill warns us – yet again – about relying on corporate “good intentions.”

The warning is particularly relevant right now, because just the other day we were told, by a local elected official, “We don’t mind you guys exaggerating a bit to make your point. But nobody believes that fracking is really as terrible as you tell us; because no one would do that, if it was as bad as you guys say!”

Here’s what Charleston’s corporate “neighbors” have done:

- August, 2008: An explosion at Bayer Crop Science killed two workers. A report of the federal Chemical Safety Board (CSB) found that the consequences would have been far worse, if the “trajectory of flying debris” had been slightly different.
- January, 2010: Just three days after CSB issued its report on Bayer, a worker at DuPont was killed by phosgene gas. CSB’s investigation found that the fatal exposure was the third, separate, serious incident at the same plant within 36 hours.
- January, 2014: Freedom Industries “discovered”, after WV DEP investigators were already on site, that crude MCHM had been leaking from an impoundment above the intake for Charleston’s water system. (Two days later, the company acknowledged that a second chemical had also been leaking.)

(Continued on Page 2, **CHARLESTON**)

**Marcellus Protest is a project of the Thomas Merton Center (Pittsburgh, PA): [www.thomasmertoncenter.org](http://www.thomasmertoncenter.org)**

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## ***Voyles v Range Resources: How Stonewalling Works***

WASHINGTON COUNTY: Officially, the case is “Voyles v Pa. DEP.” Beth Voyles went to court to make the DEP enforce its own regulations; but her real adversary is Range Resources (**RRC**). The story:

2009: RRC constructs a frac water pond adjacent to the Voyles property.

March 2010: DEP cites RRC for contamination from the pond. During the next several months farm animals die and people fall ill.

May 2011: Odors and symptoms worsen. DEP and RRC agree to repair the pond, but refuse to disclose the contaminants to residents. Voyles files suit, demanding DEP enforce state laws against RRC.

2012: Voyles learns that DEP altered lab results to exclude known contaminants.

2012: RRC’s motions to avoid going to trial are denied. RRC fails to deliver documents demanded on discovery, and the court orders RRC to produce them.

2013: When the deadline passes, RRC alleges that it doesn’t know what chemicals it used. RRC ends its use of the pond, hauling contents to an undisclosed site.

(Expected in 2014): RRC removes and backfills the pond; Court declares Voyles’ suit “moot,” and RRC walks away.

**CHARLESTON** (Continued from Page 1)

The findings on these three industrial “accidents”, clustered within less than six years and less than 20 miles, included these observations:

1. After the Bayer incident, a citizens group proposed a set of safety standards, based on “best practices” in other chemical industrial areas. The CSB report recommended adopting those standards, but neither the industry nor elected officials ever took up any consideration of using them. CSB put forward the same recommendations after the DuPont incident, but they were ignored again.
2. CSB’s DuPont investigation found that the rubber hose that failed was known to deteriorate with exposure to phosgene. A different material had been considered, but DuPont management decided that to use a more expensive hose would “set a precedent” for demanding costly safety measures at other plants.
3. In retrospect, Charleston’s water intake could have been closed to limit the spread of contamination, but no one told the water company what was in the spill. Likewise, when Bayer exploded, the company withheld information on its chemicals

from the county’s emergency response team. And the DuPont worker who died wasn’t immediately treated for his exposure, because the plant nurse was never trained on the delayed effects of phosgene inhalation, so she rated him as “unaffected” by the leak.

Recently, Freedom Industries has filed for bankruptcy, then pledged its assets for a new loan—from its current owner — with the effect of frustrating any financial claims from the victims of its spill.

All these could be listed as “lessons learned” — that is, if we learn them.

**ROBINSON** (Continued from Page 1)

So we need to press the advantage that the Court has given us. The *Robinson* ruling won’t enforce itself; it’s up to us to make sure that our municipal officials understand — and fulfill — the duties that the Supreme Court places on them. And it’s also up to us to contend with the fracking lobbyists coming back into our communities.

Still, we can be encouraged in our efforts by the strong language the Court used in coming to its conclusions — arriving where we have been for a long time. Most of us didn’t expect such unequivocal agreement from a conservative institution, but we will take heart from it. We aren’t on the fringe any longer.

## **A Range of Resources**

Please check out our ‘Resources’ page at [www.marcellusprotest.org/resources](http://www.marcellusprotest.org/resources), and follow us on Facebook (**MarcellusProtest**) and Twitter (**@Marcellus SWPA**). Here is a sampling of our recent recommendations:

**Facing the Challenges**: Complete video archive of the November, 2013, symposium at Duquesne University, covering two days of presentations on environment, climate change, air and water quality, health and socio-political impacts of unconventional shale gas.

**Protect Our Parks**: The citizens’ campaign to save Allegheny County public parks from fracking now has its own website. Add your name, find your County Council representative, and watch for announcements of our regular meetings.

### **Upcoming Events in February, and beyond:**

**Feb. 10 (Troy, PA) and Feb. 12 (Warren, PA)**: The Pennsylvania DEP has extended its [Public Hearing on ‘Proposed Oil and Gas Regulations’](#). To speak, you must [register](#) one week in advance. (Note that, if you register as having a group affiliation, you will be restricted to one person representing your group.)

**March 15-22 (Madisonburg, PA—Centre County)**: [Shalefield Justice Spring Break](#). Inspired by the *Mountain Justice Spring Break*, a week-long setting for workshops, community service and training for action. [Register](#) on-line (sliding fee scale). (Updated details and a more extensive list of events at [www.marcellusprotest.org/event\\_calendar](http://www.marcellusprotest.org/event_calendar).)

**Updated information on these topics (with links to original sources), along with our calendar of upcoming events, and other resources, can be found at [www.marcellusprotest.org](http://www.marcellusprotest.org).**