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Reconciling Environmental Liability Standards after *Iverson* and *Bestfoods*

*Joshua Safran Reed*

In *Iverson*, the Ninth Circuit upheld a corporate officer's criminal conviction under the Clean Water Act (CWA), applying the Responsible Corporate Officer (RCO) doctrine that allows mens rea to be inferred from the defendant's position and/or level of responsibility. Significantly, *Iverson* employs the RCO's broad "authority to control" test for corporate officer liability in the face of *Bestfoods's* narrow "actual control" ruling for parent corporation liability. At the very least, *Iverson* demonstrates the Ninth Circuit's willingness to aggressively enforce the CWA with an unpopular doctrine which may or may not actually repudiate the traditional mens rea requirement necessary for criminal convictions.

## CONTENTS

Introduction ............................................................... 674  
I. Facts of the *Iverson* Decision ........................................ 675  
II. Origin of the RCO Doctrine ........................................... 678  
III. Incorporation of the RCO Doctrine into Environmental Liability ......................................................... 683  
   A. Expansion of the RCO Doctrine .............................. 684  
   B. The Decline of the RCO Doctrine ..................... 685  
IV. *Bestfoods* and Its Implications ................................. 688  
   A. The *Bestfoods* Decision ................................. 688  
   B. Environmental Liability After *Bestfoods* .......... 690  
V. *Iverson* and Its Implications ................................... 692

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INTRODUCTION

In United States v. Iverson, the Ninth Circuit upheld the defendant corporate officer’s criminal conviction of four counts of violating the Clean Water Act (CWA). The CWA, like most statutes with criminal penalties, requires a certain mens rea or knowledge requirement for a defendant to be found liable. In other words, the defendant must be cognizant of the violations committed in order to be found guilty. The court in Iverson departed from this standard, however, and applied the Responsible Corporate Officer (RCO) doctrine which allows the requisite mens rea to be inferred from the defendant’s position and/or level of responsibility.

The RCO doctrine permits an individual’s requisite knowledge about criminal actions to be inferred from certain circumstantial evidence, namely the position and responsibility of that individual for (1) the operations that led to the violations, or (2) the employees that committed the actions in question. If a corporate officer is in charge of an activity or an employee that violates a criminal provision, the mens rea of the persons who physically committed the crime may be imputed to the corporate officer by virtue of her position or responsibility. It is not clear, in theory, whether the RCO doctrine acts as a knowledge substitute or whether it simply raises the inference that the corporate officer possessed knowledge of the violations. The Ninth Circuit’s decision in Iverson is the only recent appellate decision that supports the application of the RCO doctrine.

This application of the RCO doctrine by the Ninth Circuit is significant because it: (1) potentially conflicts with the Supreme

1. United States v. Iverson, 162 F.3d 1015 (9th Cir. 1998).
3. See Dennis v. United States, 341 U.S. 494, 500 (1951) (stating that “[t]he existence of mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.”).
4. See, e.g., JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW, § 10.02[B] (1987), in broad terms, "mens rea" means "guilty mind," "vicious will," "immorality of motive," or, simply, "morally culpable state of mind."
Court's recent decision in *United States v. Bestfoods*\(^8\) which endorsed more restrictive rules for imposing environmental liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);\(^9\) (2) demonstrates a willingness by the Ninth Circuit to apply an unpopular doctrine in an aggressive manner; and (3) repudiates the traditional *mens rea* requirement necessary for criminal convictions. This Note summarizes the *Iverson* decision, addresses the three significant factors surrounding it, provides background to illustrate its importance, and analyzes the case's potential implications. Part I contains the facts of the *Iverson* decision. Part II addresses the origin of the RCO doctrine. Part III addresses the insertion of the RCO doctrine into environmental liability. Part IV discusses the *Bestfoods* decision and its implications. Finally, Part V discusses the significance and potential implications of the *Iverson* decision.

I

FACTS OF THE *IVERSON* DECISION

Thomas E. Iverson, Sr. founded CH2O, Inc., a chemical blending and distribution company in the State of Washington.\(^10\) He also served as both the company president and the chairman of the board.\(^11\) The company, which created numerous products including acid cleaners and heavy-duty alkaline compounds, shipped its blended chemicals to its customers in drums.\(^12\) The drums were returned after use and were cleaned and reused.\(^13\) This cleaning process generated a wastewater regulated by the Clean Water Act (CWA).\(^14\) The company failed to obtain a wastewater discharge permit and employed various illegal disposal methods.\(^15\)

\(^10\) See *Iverson*, 162 F.3d at 1018.
\(^11\) See id.
\(^12\) See id.
\(^13\) See id.
\(^14\) See id. at 1019.
\(^15\) See id. at 1018. The CWA provides, in part, that any person who "knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits . . . shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both." 33 U.S.C. § 1319(c)(2)(B) (1994). CH2O's discharge was a "pollutant" under 33 U.S.C. § 1362(6) (1994).
Beginning around 1985, Iverson personally discharged the wastewater from the cleaning process. He also ordered his employees to discharge the wastewater on the plant's property using a sewer drain at an apartment complex that Iverson owned, and a sewer drain at his own home.16 This illegal discharge continued until 1988, when, at the direction of a new employee, CH20 employed a waste disposal company to take care of its wastewater. This process was very expensive, and, in late 1991, CH20 stopped its drum-cleaning operation all together and began shipping the drums to a professional outside contractor for cleaning. In 1992, CH20 fired the new employee, and Iverson bought a warehouse in Olympia, Washington, which, unlike the previous location, had sewer access.17 After the purchase, CH20 resumed its cleaning operation and disposed of the wastewater through the sewer of its newly acquired warehouse. CH20 neither obtained a permit nor secured permission to dispose of the wastewater in that manner. The cleaning operation continued until the summer of 1995 when CH20 learned that it was under investigation for illegal disposal of pollutants. In 1995, a few months before CH20 resumed the cleaning operation, Iverson officially "retired."18

In September of 1997, Iverson was charged with violating the CWA four times within a four-year period.19 This time period included Iverson's official "retirement" from the company. The district court found, however, that even after his "retirement," Iverson continued to receive money from CH20 in order to conduct business at the company's facilities and to give orders to employees.20 Moreover, in documents that it filed with the state, the company continued to list Iverson as the president of the company. In addition, the employee who was responsible for running the day-to-day oversight of the cleaning operation testified that he still reported to Iverson, even after the "retirement."21

During the four-year period, Iverson was sometimes present when the drums were cleaned.22 According to testimony, he was

16. See id.
17. See id.
18. Id. at 1019.
19. See id. Iverson was also charged with and convicted of violating various state and municipal laws, as well as conspiring to violate such laws.
20. See id.
21. See id.
22. See id.
close enough to see and smell the waste. In some instances, he lied to employees and told them that he had obtained a permit for the operation. At other times, however, he simply told employees that, if they got caught, “the company would receive only a slap on the wrist.” Iverson miscalculated the gravity of his actions, however, and received something more than a “slap on the wrist.” After an eight-day trial, the jury found him guilty on all four counts of violating the CWA.

During the trial, the government argued, as an alternative to liability for his direct participation in the illegal dumping, that Iverson could be held liable under the CWA as a “responsible corporate officer.” The trial court agreed and instructed the Iverson jury that Iverson could be found liable as a RCO under the CWA:

if it found, beyond a reasonable doubt: (1) that the defendant had knowledge of the fact that pollutants were being discharged to the sewer system by employees of CH2O, Inc.; (2) that the defendant had the authority and capacity to prevent the discharge of pollutants to the sewer system; and (3) that the defendant failed to prevent the on-going discharge of the pollutants to the sewer system.

After the jury reached a guilty verdict on all counts, the district court sentenced Iverson to one year in custody, three years of supervised release, and a $75,000 fine. Iverson appealed to the Ninth Circuit Court of Appeals, where he argued that the district court had misinterpreted the scope of RCO liability. He suggested that a corporate officer is “responsible” only when he in fact exercises control over the activity causing the discharge or has an express corporate duty to oversee the activity.

23. See id.
24. Id.
25. See id.
26. See id. at 1026.
27. Id. at 1022.
28. See id. at 1019.
29. See id. at 1022.
30. See id. Iverson also argued that the district court erred since the state and municipal codes in question allow discharges of industrial waste that do not affect the water. The Ninth Circuit disagreed. See id. at 1019-21. In addition, Iverson asserted that the CWA and the other statutes in question are unconstitutionally vague. The Ninth Circuit again disagreed, noting that a “reasonable person of ordinary intelligence would understand” from reading the statutes that they prohibit the improper discharge of industrial waste. Id. at 1021. Iverson also claimed that the district court abused its discretion by allowing into evidence Iverson’s prior discharges of industrial waste at a variety of improper locations. The Ninth Circuit continued to disagree with Iverson and found that the trial court had not abused its
The Ninth Circuit was not persuaded. The court noted that the CWA holds criminally liable "any person who . . . knowingly violates" its provisions.\textsuperscript{31} Since the CWA defines the term "person" to include "any responsible corporate officer"\textsuperscript{32} but does not define the term "RCO," the court concluded, "we generally interpret that term by employing the ordinary, contemporary, and common meaning of the words that Congress used."\textsuperscript{33} The court reasoned that under such a meaning, any corporate officer who is "answerable" or "accountable" for the unlawful discharge is liable under the CWA.\textsuperscript{34} The court buttressed this conclusion by briefly discussing the evolution of the RCO doctrine, which employs the same definition, and demonstrating that Congress intended for such an understanding of RCO to be used under the CWA.\textsuperscript{35} Furthermore, the court noted that the Ninth Circuit has interpreted similar terms in other statutes consistent with this understanding of RCO.\textsuperscript{36}

In rejecting Iverson's view of the RCO doctrine, the court upheld the district court's application of the doctrine, finding that under the CWA, a person is a RCO if the person has authority to exercise control over the activity that violated the CWA.\textsuperscript{37} Furthermore, the court noted that there is no requirement that the officer in fact exercise such authority, or that the corporation expressly vest a duty in the officer to oversee the activity.\textsuperscript{38}

II

ORIGIN OF THE RCO DOCTRINE

Before the inception of the RCO doctrine, corporate officers could only be held personally liable under criminal law for "criminal acts that the officer directed, authorized, ratified, or personally undertook."\textsuperscript{39} This standard of liability expanded after discretion. See id. at 1026-27.
33. Iverson, 163 F.3d at 1023.
34. Id.
35. See id.
36. See id. at 1024 (referring to Ninth Circuit decisions regarding officer liability under the Internal Revenue Code, 26 U.S.C. § 6671(b) (1994)). The Iverson court also relied on such cases as United States v. Frezzo Bros., Inc., 602 F.2d 1123 (3d Cir. 1979) and United States v. Brittain, 931 F.2d 1413 (10th Cir. 1991), both addressing the RCO doctrine in the environmental context. See id.
37. See id. at 1025.
38. See id.
the RCO doctrine emerged from two U.S. Supreme Court decisions, United States v. Dotterweich and United States v. Park. Both Dotterweich and Park involved prosecutions of corporate officers under the Federal Food, Drug, and Cosmetic Act (FDCA), a strict liability statute that imposes misdemeanor penalties for violations of its provisions.

The foundation of the RCO doctrine was established in Dotterweich, where the Court examined the relationship between corporate criminal liability and the personal criminal liability of a corporate officer. Dotterweich, the president of a wholesale pharmaceutical company, was convicted under the FDCA for shipping mis-branded and adulterated drugs in interstate commerce. Dotterweich appealed his conviction, arguing that he could not be held personally liable for the violations of the company. The Second Circuit agreed and found that only his corporate employer, which had made the shipments, could be held liable under the statute. The government appealed the case.

The Supreme Court disagreed with the Second Circuit, holding instead that under a public welfare statute such as the FDCA, the offense is committed by all who bear "a responsible share in the furtherance of the transaction which the statute outlaws." The Court held Dotterweich personally liable for the company's illegal activity even though there was no evidence that he was aware of, or participated in, the illegal activity. The Court ruled that the provision of the FDCA under which Dotterweich was convicted contained no requirement for the standard criminal mens rea (culpable state of mind). The Court relied on this absence to dispense with the conventional requirement for criminal conduct—an awareness of some act of wrongdoing. According to the Court, a criminal conviction without proof of criminal intent was possible because the FDCA simply places culpability on anyone who is responsible for

40. 320 U.S. 277 (1943).
43. Dotterweich, 320 U.S. at 281-84.
44. See id. at 278.
45. See id.
46. See United States v. Buffalo Pharmacal Co., Inc., 131 F.2d 500 (2nd Cir. 1942).
47. See Dotterweich, 320 U.S. at 279.
48. Id. at 284.
49. See id. at 281.
50. See id.
eliminating or preventing hazards to the public and fails to do so.51

The Court conceded that penalizing officers who had no knowledge of the illegal activity was a broad sweep but stated that this result was a product of a legislative balancing of hardships.52 While the Court's ruling applied greater liability to corporate officers, it also increased protection of public health and welfare.53 For the purpose of general safety, the Court placed the risk of hardship upon individuals who hold positions of responsibility in potentially dangerous enterprises.54 While the Second Circuit believed the reach of this hardship might be overly harsh, the Court supported placing the hardship on Dotterweich rather than on the "innocent public who are wholly helpless."55

Amplifying the holding in Dotterweich, the Supreme Court further developed the RCO doctrine in United States v. Park.56 Acme Markets, a large national food chain, and its president, Park, were charged with violations of the FDCA for allowing food stored in an Acme warehouse to be exposed to "rodent contamination."57 Park himself did not participate in the violations of the FDCA and argued that although he had authority over the food storage conditions, it was just one of many areas of the company's operations that he oversaw.58 He contended that because he had delegated oversight responsibilities to subordinates and, since he was not personally involved in the violations, he should not be held criminally liable for them.59

The Supreme Court disagreed and ruled that the FDCA "imposes upon persons exercising authority and supervisory responsibility... not only a positive duty to seek out and remedy violations but also, and primarily, a duty to implement measures that will insure that violations will not occur."60 Relying on Dotterweich, the Supreme Court upheld Park's conviction, holding that he "had, by reason of his position in the corporation, responsibility and authority either to prevent... or

51. See id.
52. See id. at 285.
53. See id.
54. See id.
55. Id. at 284-85.
57. Id. at 658.
58. See id. at 664.
59. See id.
60. Id. at 658-59.
promptly to correct, the violations complained of, and that he
failed to do so.\textsuperscript{61}

It is clear from both \textit{Dotterweich} and \textit{Park} that the Supreme
Court intended to formulate a RCO doctrine that permits the
imposition of criminal sanctions against corporate officers for
violating public welfare statutes. Criminal liability can arise not
only from direct participation in the violations, but also from an
officer's failure to correct or prevent the criminal actions of a
subordinate over whom the officer had responsibility or
authority. Thus, even if the officer did not directly participate in,
or even have knowledge of, the violations in question, she may
still be found liable because she is in a position of responsibility
or has the authority to prevent or correct the violations in
question.

The Court justified the RCO doctrine by asserting that it is a
way to protect the lives and the health of common citizens who
are "largely beyond self-protection."\textsuperscript{62} This doctrine is based upon
the principle that the public may rightfully expect those who deal
with dangerous or potentially dangerous products to act within
the law.\textsuperscript{63} As the Court stated in \textit{Dotterweich}, for the sake of the
greater public good, public welfare statutes place "the burden of
acting at hazard upon a person otherwise innocent but standing
in responsible relation to a public danger."\textsuperscript{64} While this standard
is stringent and extensive, the Court noted in \textit{Park} that it is "no
more stringent than the public has a right to expect of those who
voluntarily assume positions of authority in business enterprises
whose services and products affect the health and well-being of
the public that supports them."\textsuperscript{65}

It should be stressed that the FDCA, the statute at issue in
\textit{Dotterweich} and \textit{Park}, is a strict criminal liability statute. In
other words, the FDCA does not contain a \textit{mens rea} element.
Violations under the FDCA are established upon proof of
commission of the prohibited acts that constitute the \textit{actus reus}
of the crime.\textsuperscript{66} Therefore, the formulation of the RCO doctrine in
\textit{Dotterweich} and \textit{Park} does not go so far as to imply a \textit{mens rea}
element merely from a corporate officer's position of

\begin{itemize}
\item \textsuperscript{61} \textit{Id.} at 673-74.
\item \textsuperscript{62} \textit{Dotterweich}, 320 U.S. at 280.
\item \textsuperscript{63} See \textit{Park}, 421 U.S. at 672.
\item \textsuperscript{64} \textit{Dotterweich}, 320 U.S. at 281.
\item \textsuperscript{65} \textit{Park}, 421 U.S. at 672.
\item \textsuperscript{66} "\textit{Actus reus}" may be defined as follows: "[t]he wrongful deed that comprises
the physical components of a crime and that generally must be coupled with \textit{mens rea}
to establish criminal liability." \textit{BLACK'S LAW DICTIONARY} 37 (7th ed. 1999).
\end{itemize}
responsibility or authority, but rather extends a subordinate's *actus reus* up the chain of corporate command.

Because of its exclusion of a knowledge requirement, strict criminal liability is a controversial issue. Its proponents often argue that: (1) only strict criminal liability can deter profit-driven manufacturers and capitalists from disregarding the health and safety of the consuming public; (2) the investigation of *mens rea* would exhaust courts, requiring the resolution of thousands of minor infractions a day; and, (3) the imposition of strict criminal liability is consistent with the general moral underpinnings of criminal law because the penalties are small, and conviction carries little or no social stigma.67

On the other hand, critics of strict criminal liability often contend that it is incongruous with any or all of the commonly avowed aims of criminal law and runs counter to the traditional standards of criminal culpability which prevail in today's society. For example, one could argue that strict criminal liability ignores the hallmark of criminal law: the defendant must have acted with an "evil" or "guilty" mind before criminal punishment is warranted.68 Similarly, such liability destroys the deterrence rationale behind much of criminal law as it is theoretically impossible to deter someone from something they have not done. Such critics might also advocate simply applying civil strict liability since only a preponderance of the evidence is needed and civil liability does not carry the stigma of a criminal conviction.69


III
INCORPORATION OF THE RCO DOCTRINE INTO ENVIRONMENTAL LIABILITY

As we have seen with the FDCA, the statute at issue in Dotterweich and Park, the RCO doctrine only applies in cases where an RCO has authority over and/or responsibility for an enterprise that has violated laws protecting public safety. Like the FDCA, environmental laws such as the CWA, the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and CERCLA are considered to be public health and welfare statutes. Based on this analysis, the RCO doctrine has been adopted in environmental jurisprudence. Congress even went so far as to insert into the CWA and the CAA the term, "responsible corporate officer," in their definitions of persons who can be held liable. Unlike the FDCA (the statute at issue in Dotterweich and Park), most environmental statutes do not impose strict criminal liability and instead require the government to prove the defendant's criminal knowledge. Applying the RCO doctrine to statutes with a knowledge requirement may allow courts to imply a mens rea element merely from a corporate officer's position of responsibility or authority. This exceeds the scope of the RCO doctrinal applicability in strict liability statutes where an

72. See Colleen C. Murnane, Criminal Sanctions for Deterrence Are a Needed Weapon, but Self-Initiated Auditing Is Even Better: Keeping the Environment Clean and Responsible Corporate Officers out of Jail, 55 OHIO ST. L.J. 1181, 1189 (1994) (noting that RCRA's Congressional history plainly acknowledges that the protection of public health and welfare is its purpose).
73. See CERCLA, 42 U.S.C. § 9604(a)(1) (West Supp. 1999) (mandating cleanup of hazardous waste that presents an "imminent and substantial danger to the public health or welfare").
74. See Block & Voisin, supra note 7, at 1349-50.
75. See infra, Section IIIA (discussing "Expansion of the RCO Doctrine").
76. See CWA, 33 U.S.C. § 1319(c)(6) (1994) (noting that "[f]or the purpose of this subsection, the term "person" means . . . any responsible corporate officer"); CAA, 42 U.S.C. § 7413(c)(6) (West Supp. 2000) (noting that "[f]or the purpose of this subsection, the term "person" includes . . . any responsible corporate officer"); see also United States v. Frezzo Bros., 602 F.2d 1123 (3d Cir. 1979) (involving a criminal prosecution under CWA, 33 U.S.C. § 1319(c)).
employee's actus reus was merely extended up the chain of corporate command. Using the RCO doctrine to impute mens rea has led many critics to argue that courts should not apply the doctrine in the context of environmental law. Such critics argue that the courts should not allow officers to go to jail without the government having met its burden of proving that the officer herself had the culpable state of mind required by the particular environmental statutes in question.

A. Expansion of the RCO Doctrine

The adoption of the RCO doctrine into the environmental context was initially addressed in United States v. Johnson & Towers, Inc., where the Third Circuit decided that the RCO doctrine should apply under RCRA. Johnson & Towers, a company that repaired and overhauled large motor vehicles using chemical degreasers and other industrial chemicals in its operation, was criminally prosecuted for the improper disposal of chemicals that RCRA classified as "hazardous wastes" and the CWA classified as "pollutants." The specific issue on appeal to the Third Circuit was whether RCRA's criminal provision, imposing fines and imprisonment, could be applied to individual employees as well as to the company. The court reversed the trial court's dismissal of the criminal charges against the individual employees, confirming that anyone can be held liable for criminal violation under RCRA, as long as each defendant is shown to have the requisite knowledge with respect to each element of the offense. The court went on to note that such knowledge, including that of the permit requirement to dispose of waste, "may be inferred by the jury as to those individuals who hold the requisite responsible positions with the corporate defendant." The Johnson court applied the RCO doctrine to RCRA cases by allowing the jury to automatically infer that

79. See generally Michael C. Ford, Reconciling Environmental Standards After Iverson and Bestfoods, 30 Env't Rep. (BNA) 229 (1999).
80. 741 F.2d 662 (3d Cir. 1984).
81. See id. at 664-65.
82. See id. at 663-64. The improper disposal consisted of draining the chemicals into a holding tank that was ultimately pumped into a tributary of the Delaware River.
83. See id. at 665.
84. See id. at 670.
85. Id.
employees or officers had the knowledge necessary for conviction, significantly lightening the government's burden when prosecuting corporate employees and officers for environmental crimes.\textsuperscript{86}

In \textit{United States v. Brittain},\textsuperscript{87} the Tenth Circuit took an even broader approach to the application of the RCO doctrine in the environmental context. In \textit{Brittain}, the defendant, a plant supervisor, was charged with two misdemeanor counts under the CWA for unlawful discharges into navigable waters.\textsuperscript{88} Unlike RCRA, the CWA expressly includes "responsible corporate officers" in its definition of persons who can be held liable under the act.\textsuperscript{89} Brittain, who was public utilities director of a small town, had general supervisory authority over the operation of the town's wastewater treatment plant. Despite evidence that Brittain was directly involved in the improper discharges,\textsuperscript{90} the Court explained that a responsible corporate officer, "to be held criminally liable, would not have to 'willfully or negligently' cause a permit violation. Instead, the willfulness or negligence of the actor would be imputed to him by virtue of his position of responsibility."\textsuperscript{91}

Cases like \textit{Johnson} and \textit{Brittain} have allowed the RCO doctrine to reduce the knowledge requirement or eliminate it altogether in the environmental context.\textsuperscript{92} As we shall see in the next section, however, other courts have declined to alter the knowledge requirement normally needed for criminal convictions.

\textbf{B. The Decline of the RCO doctrine}

Since \textit{Brittain} was decided in 1991, no court until \textit{Iverson} had successfully applied the RCO doctrine to reduce or eliminate the knowledge requirement needed for a criminal conviction of a corporate officer. The development of the RCO doctrine in the environmental context suffered a significant setback when the First Circuit rejected its applicability in \textit{United States v.}

\begin{itemize}
\item \textsuperscript{86} See id. at 669. The \textit{Johnson} court noted that the "result may appear harsh" but was satisfactory since it would protect the public health. \textit{Id.} at 666.
\item \textsuperscript{87} 931 F.2d 1413 (10th Cir. 1991).
\item \textsuperscript{88} See id. at 1414. See also CWA, 33 U.S.C. § 1319 (1994). Brittain was also charged with making false statements under 18 U.S.C. § 1001 (1994).
\item \textsuperscript{89} See CWA, 33 U.S.C. § 1319(c)(6) (1994) (defining a "person").
\item \textsuperscript{90} See Brittain, 931 F.2d at 1420.
\item \textsuperscript{91} Id. at 1419.
\item \textsuperscript{92} See, e.g., \textit{Frezzo Bros.}, 602 F.2d at 1129-30 (supporting the theory that the RCO doctrine could be invoked to impose strict liability when applied to certain environmental statutes).
\end{itemize}
MacDonald & Watson Waste Oil Co. In MacDonald, the president/owner and three employees of the company were prosecuted for knowingly disposing of hazardous waste under RCRA and for failure to report the disposal under CERCLA. The evidence at trial showed that MacDonald & Watson’s president/owner, defendant Eugene D’Allesandro, participated in the day-to-day management of the site in question and had been warned on other occasions that his company was involved in the illegal disposal of contaminated soil. There was no direct evidence, however, that D’Allesandro knew of the particular unlawful disposal at issue in this case.

The trial court’s jury instructions explained that when a defendant is a corporate officer, the prosecution may prove the defendant’s knowledge in one of two ways. The first way would be to demonstrate defendant’s actual knowledge of the incident in question. The second way would be to show that the defendant was a responsible officer of the corporation committing the crime. In order to prove that the defendant is a responsible corporate officer, the defendant must: (1) have been an officer, not merely an employee; (2) have had direct responsibility for the alleged illegal activities; and (3) have known or believed that this type of illegal activity was occurring.

On appeal, D’Allesandro argued that the RCO doctrine was totally inapplicable to crimes with a knowledge requirement, and that the prosecution had transformed the RCO doctrine into a substitute for proof of knowledge. The First Circuit agreed and vacated D’Allesandro’s conviction, holding that the trial court improperly applied the RCO doctrine “as a substitute means of proving the explicit knowledge element of this RCRA felony.” The court went on to distinguish the case from Dotterweich and Park, where the statute involved was a strict liability statute, by emphasizing that RCRA contains an explicit knowledge requirement. The court could find “no precedent for failing to give effect to a knowledge requirement that Congress has

93. 933 F.2d 35, 50-55 (1st Cir. 1991).
94. See id. at 39-40.
95. See id. at 42.
96. See id.
97. See id. at 50-51.
98. See id. at 50.
99. See id. at 50-51.
100. See id.
101. See id. at 51.
102. Id. at 52.
103. See id.
expressly included in a criminal statute." The court held that, while circumstantial evidence such as corporate position and level of responsibility could be used to show the necessary knowledge, it was insufficient to show merely that the defendant was a responsible corporate officer.

That same year, a federal district court in Washington took a similar view of the RCO doctrine in United States v. White. In White, individual employees and their employer were prosecuted under RCRA for illegal storage, transportation, and disposal of pesticide waste. The prosecution’s allegations invoked a number of RCO principles. The government alleged that the defendant officer had direct responsibility for supervising the handling of hazardous waste by company employees. Therefore, the government argued, he was liable for the acts which he knew, or should have known, were committed by all other agents and employees of the company who handled hazardous waste at company facilities.

The defendant moved to strike this portion of the government’s bill of particulars, arguing that the charge would improperly permit conviction of the alleged violations based on a theory of respondeat superior if upheld. As in MacDonald, the court distinguished this case from Dotterweich and Park, both of which dealt with a strict liability statute, and dismissed the relevant part of the holding in Johnson as "clearly dicta." The court ultimately held that the incorporation of the RCO doctrine into the charge "would allow a conviction without the requisite specific intent" and granted the defendant’s motion to strike.

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104. Id. at 52. The court found that the holding in Johnson & Towers supported only the position that knowledge of the law may be inferred but did not address knowledge of acts. See id. at 53-54. The court also dismissed the holding in Frezzo Brothers, 602 F.2d at 1129-30, since there the defendants could have been found guilty solely based on negligence, and no presumption of knowledge was necessary to sustain the convictions. See MacDonald, 933 F.2d at 54.

105. See id. at 55.


107. See id. at 877.

108. See id. at 894.

109. See id.

110. See id.

111. See id. "Respondeat superior" is a tort law doctrine that may be defined as follows: "[t]he doctrine holding an employer or principal liable for the employee’s or agent’s wrongful acts committed within the scope of the employment or agency." BLACK'S LAW DICTIONARY 1313 (7th ed. 1999).

112. Id. at 895.

113. Id.

114. See id.
IV
BESTFOODS AND ITS IMPLICATIONS

A. The Bestfoods Decision

In United States v. Bestfoods,\(^{115}\) the Supreme Court gave its interpretation and definition of "derivative liability," "direct liability," and "operator" as used in CERCLA.\(^{116}\) Under CERCLA, strict liability for cleanup costs is imposed on "owners" and "operators" of contaminated "facilities."\(^{117}\) While, in principle, CERCLA promotes letting the polluter pay for cleanup,\(^{118}\) simply determining the identity of the polluter has proven to be a very difficult task.\(^{119}\) It has been similarly difficult for courts to determine who exactly the "operator" of a contaminated site is, and how far up the corporate ladder liability extends.\(^{120}\)

Prior to the decision in Bestfoods, federal courts had taken three different approaches to a parent corporation's liability as an "operator" of a facility owned or operated by its subsidiary.\(^{121}\) A majority of the circuits focused on the parent corporation's control over the subsidiary.\(^{122}\) This majority standard held a parent liable when it had exercised actual and substantial control over the waste disposal activities of the subsidiary.\(^{123}\) The Fifth and Sixth Circuits used a standard more in keeping with

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117. See id. at §§ 9601, 9607 (West Supp. 2000).
118. See Westfarm Assocs. Ltd. Partnership v. Washington Suburban Sanitary Comm'n, 66 F.3d 669, 681 (4th Cir. 1995) (noting that the slogan "make the polluter pay" may have helped propel CERCLA into law).
119. See, e.g., United States v. Monsanto Co., 858 F.2d 160, 170 (4th Cir. 1988) (noting the technical infeasibility of tracing improperly disposed of waste to its source); see also United States v. Bliss, 667 F. Supp. 1298, 1309 (E.D. Mo. 1987) (stating that waste commingling and migration at the disposal sites make it scientifically difficult and economically infeasible to identify the sources of pollution).
120. Stephen W. Miller, Officer Shareholder and Corporate Parent Liability Under Superfund, METRO. CORP. COUNSEL, Apr. 1998, ("Ever since passage of CERCLA, federal courts have struggled with defining the meaning and reach of the term ["operator"], including its potential applicability to officers, shareholders and corporate parents.").
122. See Lucia Ann Silecchia, Pinning the Blame & Piercing the Veil in the Mists of Metaphor: The Supreme Court's New Standards for the CERCLA Liability of Parent Companies and a Proposal for Legislative Reform, 67 FORDHAM L. REV. 115, 140 (1998) (noting that the actual control test is the "majority liability theory").
ENVIRONMENTAL LIABILITY STANDARDS

124. See, e.g., Joslyn Manufacturing Co. v. T.L. James & Co., 893 F.2d 80, 82-83 (5th Cir. 1990); United States v. Cordova Chem. Co., 113 F.3d 572, 580 (6th Cir. 1997), vacated and remanded sub nom., United States v. Bestfoods, 524 U.S. 51 (1998). "Corporate formalism" refers to traditional corporate law principles under which a shareholder can be held derivatively liable only when circumstances warrant piercing the corporate veil, such as when the corporate form would otherwise be misused to accomplish wrongful purposes such as fraud. See Bestfoods, 524 U.S. at 62. The general corporate law principle that a parent corporation (so-called because of its control through the ownership of another corporation's stock) is not liable for the acts of its subsidiaries is deeply "ingrained in our economic and legal systems." William O. Douglas & Carrol M. Shanks, Insulation from Liability Through Subsidiary Corporations, 39 YALE L.J. 193, 193 (1929).


129. See id. at 62-66.

The "actual control" test focuses on the parent corporation’s relationship to the subsidiary’s facility and requires active participation on the part of the parent in the waste disposal activities of the subsidiary. In essence, for corporate liability, the "authority to control" threshold endorsed by the RCO doctrine was rejected in favor of an actual participation threshold.

B. Environmental Liability After Bestfoods

The Supreme Court’s decision in Bestfoods had an immediate impact upon the scope of individual corporate actor liability in subsequent CERCLA cases. Two recent decisions in the Sixth Circuit have addressed CERCLA liability after Bestfoods. In United States v. Township of Brighton, the court reviewed a district court decision that held a township liable as an “operator” of a waste disposal facility. The court evaluated whether the Bestfoods test should be applied to a case involving the relationship between a municipality and a contractor. The court held that an “actual control” test should apply not just in the corporate context but in the case at hand as well. The court ruled that before one can be considered an “operator” for CERCLA purposes, one must perform affirmative acts, and that a failure to act, even when coupled with the ability or authority to do so, cannot make an entity an operator.

The Sixth Circuit has also used Bestfoods to limit the CERCLA liability of individuals. In Carter-Jones Lumber Co. v. Dixie Distributing Co., for example, the court applied the holding in Bestfoods to affirm the personal CERCLA liability of the defendant corporate officer and sole shareholder for his "intimate participation" and active involvement in improper waste disposal activities. The Sixth Circuit upheld the trial court’s decision because the court’s findings satisfied the Bestfoods requirement that “an officer be actively involved in the

132. 153 F.3d 307 (6th Cir. 1998).
133. See id. at 312.
134. See id. at 314.
135. See id.
136. 166 F.3d 840 (6th Cir. 1999).
137. Id. at 846.
arrangements for disposal before individual liability may be imposed."\(^{138}\)

A few recent district court cases have also applied *Bestfoods* in CERCLA liability cases. In *Browning-Ferris Industries of Illinois, Inc. v. Ter Maat*,\(^ {139}\) an Illinois district court used the *Bestfoods* test to resolve operator claims against affiliates and shareholders.\(^ {140}\) A New York district court in *United States v. Green*\(^ {141}\) used the holding in *Bestfoods* to conclude that the defendant corporate officer and shareholder could not be found liable as an "operator" under CERCLA "unless he directly participated in the management of the facility's pollution control operations including decisions pertaining to the disposal of hazardous substances and compliance with environmental regulations."\(^ {142}\) A recent Michigan district court decision in *Datron, Inc. v. CRA Holdings*\(^ {143}\) applied the reasoning in *Bestfoods*, finding that a parent corporation was not a CERCLA "operator" of a facility owned by its subsidiary.\(^ {144}\)

Perhaps the most significant application of *Bestfoods*, however, was in *United States v. Dell'Aquilla*.\(^ {145}\) In *Dell'Aquilla*, the Third Circuit applied the *Bestfoods* test for operator liability claims under CERCLA to another federal environmental statute.\(^ {146}\) The *Dell'Aquilla* court considered the meaning of "operator" under the CAA as it pertained to liability for violations of the national emission standards for hazardous air pollutants.\(^ {147}\) The court justified its use of the *Bestfoods* CERCLA decision in the CAA context since the two statutes share a common purpose and the "language in question is nearly identical."\(^ {148}\) The CAA, like CERCLA, imposes strict liability upon owners and operators who violate its provisions.\(^ {149}\) Under the CAA, an "owner or operator" is "any person who owns, leases, operates, controls, or supervises a statutory source."\(^ {150}\) Whether

\(^{138}\) *Id.*

\(^{139}\) 13 F. Supp.2d 756 (N.D. Ill. 1998).

\(^{140}\) See *id.* at 765.


\(^{142}\) *Id.* at 217.


\(^{144}\) *Id.* at 746-47.

\(^{145}\) 150 F.3d 329 (3d Cir. 1998).

\(^{146}\) *Id.* at 334.

\(^{147}\) See *id.* at 332-34.

\(^{148}\) *Id.* at 334.


or not courts will apply *Bestfoods* to other federal environmental statutes remains to be seen.

V

**IVERSON AND ITS IMPLICATIONS**

Today, the RCO doctrine is noticeably unpopular. In the past decade, since the *MacDonald* decision, courts have been reluctant to apply the RCO doctrine in general and have declined to apply it aggressively in the environmental arena in particular.\(^1\) One might have thought that, in light of the *Bestfoods* decision and its aftermath, it might be safe to pronounce the doctrine dead.\(^2\) However, the Ninth Circuit, in *Iverson*, reintroduced the RCO doctrine as a viable means of holding officers criminally liable in the environmental context.\(^3\)

Most surprising, perhaps, is *Iverson*’s use of the broad “authority to control” test for corporate officer liability in the face of the Supreme Court’s narrow “actual control” ruling for parent corporation liability in *Bestfoods*.\(^4\) To what extent *Iverson* is inconsistent with the Supreme Court’s recent decision in *Bestfoods* is unclear. Outwardly, the two cases have little to do with one another. *Iverson* deals with corporate officer criminal liability under the CWA while *Bestfoods* addresses corporate parent strict civil liability under CERCLA. The Third Circuit’s decision in *Dell’Aquila* demonstrates *Bestfoods*’ extensiveness, however, by crystallizing the Supreme Court’s analysis of the word “operator” under CERCLA and applying it to the CAA.\(^5\)

Under the reasoning used in *Dell’Aquila*, there is no reason to assume that this “owner or operator” analysis would not apply

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1. The author intends the word “aggressively” in this context to mean applying the RCO doctrine to successfully minimize or eliminate the knowledge requirement usually necessary in criminal convictions.
2. *Bestfoods*, 524 U.S. at 66-67 (noting that in regards to environmental contamination, an operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations).
3. *Iverson*, 162 F.3d at 1025 (holding that “a person is a ‘responsible corporate officer’ if the person has authority to exercise control over the corporation’s activity that is causing the discharges. There is no requirement that the officer in fact exercise such authority or that the corporation expressly vest a duty in the officer to oversee the activity.”).
4. *Bestfoods* held that an “operator” must participate in and control its subsidiaries’ activities to be liable. *Bestfoods*, 524 U.S. at 70-72. *Iverson*, however, held that a “responsible corporate officer” did not have to participate or control her employees’ actions to be held liable. Liability hinged only on “authority to exercise control” over the activity in question. See *Iverson*, 162 F.3d at 1025.
5. *Dell’Aquila*, 150 F.3d at 334.
to the CWA as well, so long as it shares a common purpose with CERCLA.\textsuperscript{156} The CWA does, in fact, employ the terms "owner or operator."\textsuperscript{157} However, while the phrase appears, it is important to note that the "owner or operator" designation in the CWA is distinct and unrelated to criminal liability in general and to the provision under which Iverson was convicted in particular.\textsuperscript{158} Unlike CERCLA, the CWA explicitly uses the term "responsible corporate officer" to describe a person who "has authority to exercise control over the corporation's activity that is causing discharges."\textsuperscript{159} Under the CWA an "owner or operator" is simply another type of "person."\textsuperscript{160} In the \textit{Iverson} decision, Iverson is referred to as a "responsible corporate officer," not as an "owner or operator."

Serious policy differences also set the analysis in both \textit{Bestfoods} and \textit{Dell'Aquilla} apart from the reasoning in \textit{Iverson}. The relevant provisions from CERCLA and the CAA, as discussed in \textit{Bestfoods} and \textit{Dell'Aquilla}, deal with strict civil liability penalties for "owners or operators" who are often only tenuously connected to the violations in question and are held vicariously liable despite insubstantial and remote culpability.\textsuperscript{161} This is not so with the criminal provisions of the CWA, which are used to punish flagrant and direct violators of its regulations.\textsuperscript{162} In this

\begin{itemize}
\item[156.] The \textit{Bestfoods'} definition of "owner or operator" can be applied to the terms "owner or operator" in all environmental statutes with similar language and purpose. \textit{See Dell'Aquilla}. 150 F.3d at 334.
\item[157.] 33 U.S.C.A. § 1316(a)(4) (West Supp. 2000) ("The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a source.").
\item[158.] The "owner or operator" provision appears, for example, in 33 U.S.C. § 1319 (f) (1994) (providing that the administrator may commence a civil action for appropriate relief, including, but not limited to, a permanent or temporary injunction) which discusses the wrongful introduction of pollutants into treatment works. Iverson was convicted under a criminal provision contained in 33 U.S.C. § 1319(c)(2) (1994). \textit{See Iverson}, 162 F.3d at 1022.
\item[159.] \textit{Iverson}, 162 F.3d at 1015.
\item[160.] The CWA defines the word "person" to include "any responsible officer." 33 U.S.C. § 1319(c)(6) (1994). The term "owner or operator" simply refers to a type of person (including a RCO) who "owns, leases, operates, controls, or supervises a source." 33 U.S.C. § 1316(a)(4) (1994).
\item[162.] Violations of the CWA generally involve either a direct failure to comply with regulations that prohibit or regulate the discharge of pollutants. \textit{See}, e.g., United States v. Curtis, 988 F.2d 946 (9th Cir. 1993) (upholding conviction for discharging pollutant into surface waters of United States); United States v. Hamel, 551 F.2d 107 (6th Cir. 1977) (upholding conviction for knowing discharge of gasoline into lake). Violations also include failure to obtain a permit or to abide by the terms and conditions of a permit. \textit{See}, e.g. United States v. Holland, 874 F.2d 1470 (11th Cir. 1989) (upholding conviction for dredging and filling wetlands without permit); United States v. Frezzo Bros., 703 F.2d 62 (3d Cir. 1983) (upholding conviction for willful or
context, the RCO doctrine is often applied simply to more efficiently and more expeditiously establish a mens rea for individual defendant corporate officers who are hiding behind corporate formalities. Given this analysis, it seems unlikely that Iverson is inconsistent with Bestfoods. This is not to say that the Supreme Court would not overturn Iverson in an effort to knock out the aggressive application of the RCO doctrine once and for all, but if the Supreme Court did so, it is unlikely that it would rely on Bestfoods in its decision.

While the holding in Iverson may not be inconsistent with Bestfoods, it certainly demonstrates a willingness by the Ninth Circuit to apply an unpopular doctrine in an aggressive manner. Although the Ninth Circuit has a reputation as a renegade circuit, it is notable that the court applied the RCO doctrine despite its waning importance over the last decade. Not since Brittain in 1991, has any federal circuit allowed the RCO doctrine to alter the knowledge requirement needed for a criminal conviction.

The Iverson decision could be an indicator of a national trend towards reinvigorating the RCO doctrine, or, more realistically, an indicator of a Ninth Circuit trend towards reinvigoration. This trend could be prompted by a number of factors including an urgent prosecutorial need to eliminate or reduce the burden of the knowledge requirement in order to more effectively enforce environmental criminal statutes against rampant corporate violations. The Iverson court might also have been taking a cue from Congress’ recent broad additions to a number of environmental statutes of criminal penalties with a reduced knowledge requirement. These additions included new criminal penalties and strengthened existing ones. For example, in 1987, Congress amended the criminal provisions of the

163. See, e.g., United States v. Hopkins, 53 F.3d 533 (2d Cir. 1995) (upholding conviction for falsifying, tampering with, or rendering monitoring device inaccurate); United States v. Kennecott Copper Corp., 523 F.2d 821 (9th Cir. 1975) (upholding conviction for failure to report oil spill).
164. See Marybeth Herald, Reversed, Vacated, and Split: The Supreme Court, the Ninth Circuit, and the Congress, 77 OR. L. REV. 405, 411 (commenting that “evidence that the Ninth Circuit’s reputation as a court that gets reversed may lead to more than its fair share of reversals”).
165. See Hustis & Gotanda, supra note 39, at 169-70 (noting a climate of heavy prosecutorial activity).
166. See Gaynor & Bartman, supra note 6, at 40 (noting, for example, the introduction of the novel offense of “negligent endangerment” into the CAA).
CWA, increasing from one year to three the potential period of imprisonment for criminal violations and adding to the existing criminal penalties a section prohibiting "knowing endangerment." The new section imposed maximum penalties of 15 years' imprisonment and $1 million fines for "organizations."

Inspired by Congress' adjustments to the CWA, the Ninth Circuit has clearly become more aggressive in its application of the statute. For example, in its recent decision in United States v. Hanousek, the court held, for the first time, that criminal liability for a violation of the CWA could be found under a broader "ordinary negligence" standard rather than only under a stricter "criminal negligence" standard. The Ninth Circuit applied this "ordinary negligence" standard to a general contractor's project supervisor who did not even physically take part in the negligent act and who was not required to hold a permit under the CWA. The court upheld his sentence of six months in jail, six months in a halfway house, and six months of supervised release, as well as a fine of $5,000. The holding in Hanousek demonstrates that, although Iverson may or may not mark a new trend to reinvigorate the RCO doctrine, it is clearly part of a new trend to vigorously implement the CWA.

While Iverson could be construed as an indicator of a shifting trend, it might also be seen simply as an anomaly. The Iverson decision appears to hold that a potentially "innocent" responsible corporate officer in a position of authority can be convicted of a CWA felony for a violation of which she was not even aware. The facts in Iverson can tell a different story, however. Iverson was anything but an innocent passive supervisor who fell victim to a vindictive federal statute. He was integrally involved in the day-to-day operation at CH2O, he purposely lied to his employees, and he actively participated in dumping toxic poisons into the water system. The Ninth Circuit may have been advocating an expansion of corporate officer liability, or it may simply have been in favor of easing the government's knowledge requirement

168. Id. § 1319(c)(2) (1994).
169. Id. § 1319(c)(3) (1994).
171. 176 F.3d 1116 (9th Cir. 1999).
172. See id. at 1118.
173. See id. at 1122.
174. See id. at 1120.
175. See Iverson, 162 F.3d at 1019.
hurdle in order to convict a pernicious and persistent environmental criminal.\(^{176}\)

On a broader scale, Iverson does promote the RCO doctrine despite its tension with the traditional mens rea requirement necessary for criminal convictions. Regardless of its break with tradition, some argue that the RCO doctrine is necessary in order to allow for more criminal convictions of corporate officers.\(^{177}\) Public health and safety are under constant threat from environmental harms, and targeting individuals with criminal penalties has a stronger deterrent effect since individual officers, unlike corporations, cannot treat criminal fines and sentences as a cost of doing business.\(^{178}\) Significantly, the cases that most frequently arise under the RCO doctrine are those in which the violations have been deliberate and premeditated.\(^{179}\) Furthermore, public policy considerations support a practice of affirmative responsibility and greater risk of criminal sanctions for officers whose business activities can reach and possibly harm the innocent public.\(^{180}\)

While the RCO doctrine may undermine the traditional knowledge requirement, the act of prosecuting corporations who are engaged in environmental crimes is an important endeavor. The harm caused by environmental crimes is often as destructive as that caused by traditional crimes, and the corporate perpetrators are often as morally culpable as traditional criminals.\(^{181}\) By imposing criminal penalties on corporate officers, companies are less likely to view sanctions as a business cost to pass on to consumers and are more likely to fear the stigma of a criminal conviction.\(^{182}\)

\(^{176}\) See Daniel Riesel, Environmental Enforcement: Civil and Criminal § 6.03 (1998).


\(^{179}\) See Cooney, supra note 177, at 10,468-469.

\(^{180}\) See Block & Voisin, supra note 7, at 1373 (discussing the current status of the RCO doctrine).


\(^{182}\) See Richard J. Lazarus, Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime, 27 Loy. L.A. L. Rev. 867, 880 (1994) (noting that, "a conviction under many existing environmental laws subjects the defendant company to 'debarment,' meaning that the company is not eligible to enter into a contract with the federal government for a specified time period"); see also Susan Hedman, Expressive Functions of Criminal Sanctions in Environmental Law, 59 Geo. Wash. L. Rev. 889, 894 (1991); see, e.g., CWA, 33 U.S.C. § 1366(a) (1994). See generally Maura M. Okamoto, RCRA's Criminal Sanctions: A Deterrent Strong Enough
Iverson's support of the RCO doctrine may also be seen in a negative light, however. After all, the RCO doctrine's higher conviction rate of corporate officers may have a detrimental effect on commerce. For corporations to hire and retain qualified officers, they must protect them from criminal liability. To the extent that they are unable to provide this protection, well qualified officers will become scarcer and consumers will suffer as stock prices go down and product prices go up.\textsuperscript{183} In addition, criminal penalties for actions unbeknownst to the defendant officer run at odds with traditional conceptions of criminal culpability and could allow officers to go to jail without the government having reached its burden of proof.\textsuperscript{184} Furthermore, allowing officers to go to jail without the traditional mens rea can be seen as simply unfair. This unfairness is particularly emphasized in light of the Bestfoods decision which, combined with Iverson, may render the ironic result of imposing more stringent standards for strict civil liability on corporations than for criminal penalties on individuals.\textsuperscript{185}

Iverson could well have significant consequences for corporate officers. Officers may now be more susceptible to criminal liability for intentional or negligent environmental violations perpetrated by their company without regard to the officers' actual knowledge or culpability. Some might go so far as to say that Iverson could lead to the conviction of innocent people and the creation of criminal acts out of omissions.\textsuperscript{186}

Ultimately, however, a careful analysis of case law will conclude that Iverson has not furthered the RCO doctrine at all. This conclusion rests on the assertion that the RCO doctrine is simply a "myth" perpetuated by unnecessary dicta in the cases in which it has been discussed.\textsuperscript{187} It is clear that, in every case in which a conviction has been upheld under the RCO doctrine, the facts have definitively shown that the defendant did indeed have actual knowledge of the illegal activity in question.\textsuperscript{188} It is

\textsuperscript{183} See Wells, supra note 78, at 189.
\textsuperscript{184} See id. at 90.
\textsuperscript{185} See Ford, supra note 79, at 229.
\textsuperscript{186} See Thomas A. Shook, Ninth Circuit Rejects Narrow Interpretation of "Responsible Corporate Officer," 8 S.C. ENVTL. L.J. 111, 116 (1999) (discussing the implications of the Iverson decision).
\textsuperscript{187} See Hustis & Gotanda, supra note 39, at 195-96.
\textsuperscript{188} See id. (citing Richard G. Singer, The "Responsible Corporate Officer" Doctrine in Environmental Cases, 6 TOX.L.REP. (BNA) 1378, 1380 & n.26 (1992); Are Obnoxious Wastes More Like Machineguns or Hand Grenades?: Mens Rea Under the
reasonable to argue that since courts have only applied the RCO doctrine in such instances, only court dicta and a few overly theoretical analyses of case law truly support the existence of an actual RCO doctrine.¹⁸⁹ The ultimate significance of the Iverson decision, we may conclude, is simply that it demonstrates a renewed effort on the part of the Ninth Circuit to vigorously implement the Clean Water Act.

¹⁸⁹ See Singer, supra note 188, at 1378.