



STRICT LIABILITY CRIMES FOR THE POLLUTION OF AMERICAN WATERS

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The Refuse Act is a section of the Rivers and Harbors Act of 1899, which creates a prohibition against the discharge of refuse in the navigable waters of the United States. The purpose of the act is to maintain unobstructed waterways for the transportation of marine commerce and the protection of the waterways from pollution.¹ The Refuse Act is codified in Title 33 United States Code Section 407 and states, “It shall not be lawful to throw, or discharge, or deposit...any refuse matter...into any navigable water of the United States.”² Title 33 U.S.C. 411 makes any violation of Section 407 a misdemeanor punishable by imprisonment and a fine of up to \$25,000 per day.³

For a time there was a question as to whether the Refuse Act was limited to the kinds of debris that would obstruct navigation, but in *United States v. Standard Oil Company* the Supreme Court made it clear that oil and gas qualify as refuse.⁴ “Oil is oil and whether useable or not by industrial standards is has the same deleterious effect on waterways. In either case, its

presence in our rivers and harbors is both a menace to navigation and a pollutant.”⁵ Under the Refuse Act’s catch-all provision the Supreme Court indicated that whatever causes serious injury to American waterways by obstacles that impede navigation or by pollution maybe refuse.⁶ In fact, the only substances or things that may not be refuse is “that flowing from streets or sewers and passing therefrom in a liquid state,” everything else may fall under the catch-all definition of refuse.⁷

The Refuse Act is a strict liability criminal statute; the government does not need to prove that the defendant had any particular mental state to hold the defendant criminally liable. As a strict liability crime violations are more difficult to defend, thus violations most likely end in settlement.

The *Exxon Valdez* ran aground in Prince William Sound and discharged more than 10 million gallons of crude oil on March 24, 1989.⁸ Count Two of the five count indictment filed on February 27, 1990 against Exxon was a Refuse violation, violations of Title 33, U.S.C. 407 and 411.⁹ Initially the government demanded that Exxon pay \$600 million to settle the case, but ended up accepting a settlement of \$125 million dollars.¹⁰ Exxon ended up paying \$12.5 for each gallon of crude oil that spilled on the Alaskan coast.

It has been over 100 years since the Refuse Act became law in an effort to codify various legislative efforts to protect America’s waterways and marine commerce from the ill effects of dumping.¹¹ Today, the Refuse Act has a powerful tool of criminal enforcement that the government can use to deter and prosecute environmental polluters.

¹ United States v. Standard Oil Co., 384 U.S. 224, 228—229 (1966).

² 33 U.S.C. § 407.

³ 33 U.S.C. § 411.

⁴ Standard Oil Co., 384 U.S. at 226.

⁵ *Id.*

⁶ *Id.* at 229.

⁷ *Id.*; *See*, 33 U.S.C. § 407.

⁸ United States v. Exxon Corp. and Exxon Shipping Co., No. A90-015, 1990 U.S. Dist. LEXIS 1821, *3—4 (D. Alaska Feb. 27, 1990).

⁹ *Id.* at *4—5.

¹⁰ Richard Mauer, *Criminal charges were leveled after Exxon Valdez spill*, ANCHORAGE DAILY NEWS, Jun. 1, 2010, <http://www.adn.com/2010/06/01/1303517/criminal-charges-leveled-after.html>.

¹¹ Standard Oil Co., 384 U.S. at 226—228.