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SUPERFUND LIABILITY FOR ROADWAY STORMWATER DISCHARGES?

The Washington State Department of Transportation has been held to be potentially liable as an arranger of disposal of hazardous substances under Superfund Law, due to discharges of highway stormwater runoff which contributed to the contamination of local waterbodies. The case involves the Commencement Bay-Nearshore Tidelands Superfund Site in Tacoma, where there are hazardous substances contaminating sediment. The U.S. Government filed a complaint against the Department of Transportation in Washington State to recover costs related to cleaning up the contaminated sediment.

Highway runoff reportedly comes from Interstate 5, State Route 705, and State Route 509, and travels via drainage structures and winds up being disposed of in the Thea Foss and/or Wheeler Osgood Waterways. Although the Department of Transportation in Washington State contends that highway stormwater collection systems are exempt from Superfund Liability, a question has arisen because the Department of Transportation has the ability to redirect, contain and treat its stormwater runoff. This is the federal government's answer to the DOT's contention that "it lacks sufficient control over contaminants other materials" that are present in stormwater runoff.

Another argument relates to whether there is compliance with Clean Water Act Permits, and there is already a dispute as whether DOT has been in compliance with such permits.

If this ruling stands, future stormwater runoff discharges will increasing be scrutinized, as is already the case under expanded state and federal stormwater programs. Making government agencies who manage or design measures for stormwater runoff, additionally responsible for contaminated sediment

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*cleanup will make the management of stormwater
much more difficult and costly in the United States.*

- Gary Brown

