



Washington DOT Case

## STORMWATER GETS SERIOUS

*Press Release*

In a Federal Court case carefully watched by those discharging Stormwater, the Washington State Department of Transportation continues to be considered liable by Federal Court for contaminants in sediment resulting from highway runoff. This means that Comprehensive Environmental Response Cleanup Liability Act (CERCLA/Superfund) liability provisions apply to impacted sediment resulting from stormwater discharges.

Washington State had maintained that their activities did not produce the contaminants, but has occurred at other sites, involving dry cleaner solvent discharges to sewers. Those operating and maintaining conveyance systems can be held liable when contamination results from leakage or discharges from the conveyance system they are responsible for maintaining.

As intensified scrutiny and permitting of stormwater discharges continues throughout the country, litigation against stormwater dischargers is breaking out. From Southern California to Boston, litigation to stop discharge of contaminants in stormwater has focused on scrap yards, a number of which have moved promptly to upgrade operations and treat stormwater discharges from dismantling and exterior parts storage areas. Salvage yards face particular technical difficulties in complying with stormwater laws and regulations because even though it is preferential to complete auto dismantling and salvage material stores operations indoors, much of the operating equipment salvage yard operators use is diesel driven, causing health concern issues with diesel exhaust in indoor spaces.

Fortunately, modular stormwater treatment systems are now available, which work well, to treat stormwater in areas of several acres or less, at reasonable cost. One Boston salvage yard owner/operator, faced with a notice letter regarding litigation over stormwater discharges, promptly ordered StormwaterRx modular treatment equipment, which has proven popular on the West Coast. (For more information on StormwaterRx Systems, [click here.](#))

In the Greater Philadelphia Area, municipalities are pursuing litigation against the Pennsylvania Department of Environmental Protection, as they do not believe that requirements to address stormwater discharges are reasonable. A new case involves municipalities in suburban areas of the Washington Creek watershed. We will provide updates on this case in future editions of the *RT Review*.

For about two decades, following 1970's Federal Legislation calling for fishable and swimmable waters throughout the country by 1978, stormwater regulations and permitting of discharges was

slow to be promulgated, due to concerns about technical complexity and lack of cost effectiveness. The State of Washington case proves that dealing with the quality of stormwater in particular, has become an issue that all of those owning or operating facilities with stormwater discharges need to focus on promptly. The contaminants of concern in stormwater discharges from sites now being focused on include metals such as arsenic, lead and zinc, and PAH hydrocarbons including Benzo(a)pyrene. With litigation breaking out, those facing noncompliance through the threat of litigation have much to lose. Litigation has frequently proven to be costly, particularly when environmental basics, either keeping potentially contaminated materials under roof or providing practical treatment of stormwater, are available to solve the problem. Careful examination of Best Management Practices now should be of interest to all stormwater dischargers.

Based on recent regulatory and litigation activity, the following are the current focus of stormwater concerns:

- Power Facility Yards (coal residuals, oils and impacts from exposed equipment)
- Industrial Yards (oils and metals from exposed equipment)
- Truck Stops (discharge of oil and travel waste water)
- Salvage Yards (oils and metals from exposed parts and dismantling areas)
- Concrete Plants (cement fines and lime)
- Municipal Stormwater Systems (discharge of street trash and oils through storm drains)

RT's President, Gary Brown, will be speaking on Stormwater issues at the Pennsylvania Bar Institute/Environmental Law Forum, on April 6<sup>th</sup>, in Harrisburg. For more information on this event, [click here](#).

At the Pennsylvania Chamber of Business and Industry Spring Environmental Conference, Gary Brown, RT's President, and Justin Lauterbach, RT's Southwest Pennsylvania Office Regional Manager, will also be making a presentation on Stormwater, including the latest updates to PADEP's rules. Online registration and agenda will be available on the PA Chamber's website by Feb. 1. Visit [www.pachamber.org](http://www.pachamber.org) and click on *Conferences and Events*.

RT is already handling a large number of sites with respect to stormwater upgrading, and is also providing expert services on cases in New Jersey and Pennsylvania. For more information, contact Gary Brown at 800-725-0593, extension 234, or by email at [gbrown@rtenv.com](mailto:gbrown@rtenv.com).