

## Court Holds That CERCLA “Facility” Owners and Operators Are Not Liable for Off-Site Cleanup Costs

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On July 7, 2010, the U.S. District Court for the Western District of Washington held that a party is not liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) as an owner or operator of a superfund “facility” if the only cleanup costs incurred were to address off-site contamination. *U.S. v. Washington State Dept. of Transportation*, 2010 WL 2698854 (W.D. Wash. 2010). The federal government sought to hold the Washington State Department of Transportation (“WSDOT”) responsible as an owner and operator of a roadway property that allegedly contributed coal tar contamination into two nearby waterways. The District Court rejected the federal government’s summary judgment motion, which was based on the argument that WSDOT was liable under CERCLA sections 107(a)(1) or 107(a)(2) as an owner and operator of the roadway.

The Court found that, in order to hold a party liable as a facility’s current or former owner or operator, cleanup costs must be incurred cleaning up the facility itself, not other, off-site properties. The federal government did not allege that it had spent any money cleaning up WSDOT’s property, but instead, the government’s response costs were limited to addressing contamination in the nearby waterways. Consequently, the Court concluded that WSDOT was not liable as an owner or operator under CERCLA.

The Court noted that CERCLA is not intended to hold a person owning or operating a building close to the cleanup site liable whether or not that person is responsible for contaminating the site. Other mechanisms might be available to hold such parties liable for off-site contamination, such as arranger or transporter liability under CERCLA sections 107(a)(3) and 107(a)(4). However, because the federal government did not assert arranger or transporter liability against WSDOT in the summary judgment motion, the Court did not decide whether WSDOT could be liable under those provisions.

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