

The expanding reach of CERCLA

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To establish a claim under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) (“CERCLA”), the United States must prove: (1) the site is a “facility”; (2) a “release” or “threatened release” of a hazardous substance occurred; (3) the government incurred the costs in responding to the release or threatened release; and (4) the defendant is a liable party pursuant to 42 U.S.C. § 9607(a). *U.S. v. Chapman*, 146 F.3d 1166 (9th Cir. 1998). Once the government establishes a *prima facie* case for response costs, the burden shifts to the defendant to prove that the government’s responsive actions were inconsistent with the national contingency plan. *Id.*



In a recent opinion issued by the United States District Court for the Western District of Washington at Tacoma, the Washington State Department of Transportation (“WSDOT”) was found to be an “arranger” under 42 U.S.C. § 9607(a)(3) as it caused the disposal of hazardous substances by designing, constructing and operating certain drainage systems whose purpose was to collect highway runoff water and dispose of it into nearby water bodies. WSDOT did not dispute that the highway runoff water contains hazardous substances including phthalates, heavy metals, including cadmium, lead, zinc and nickel, and petroleum hydrocarbons. Despite WSDOT’s argument that it did not have control over the hazardous substances, the Court determined that WSDOT was a liable party under CERCLA because it had actual knowledge that the runoff water contained hazardous substances and there was an actual release of the hazardous substances into the environment.

- [View *U.S. v. Washington State Department of Transportation*](#)

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