



**Background paper for the  
"Seminar on Strengthening the Enforcement and Administration  
of Environmental law in North America."  
PANEL 2.- Procedural and evidentiary challenges for effective  
environmental law enforcement. (b) Evidentiary Issues.  
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### **Evidentiary Issues in Environmental Cases in the United States**


Evidentiary issues in the courts of the United States are governed by the Federal Rules of Evidence (FRE or ARules@). The purpose of the Rules is Ato secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.@ FRE 102. A court may only rely upon evidence that is both relevant and admissible, terms which are defined by the Rules. Federal judges in United States courts decide issues of law and fact, such as what evidence to admit and what to exclude. In cases with juries, the judge typically decides issues of law and the jury decides issues of fact. Before a case goes to a jury, however, the judge must assess the evidence as a whole and decide whether it is sufficient to send the case to the jury for a decision.

Among other things, the Rules require authentication of documentary evidence and prevent reliance on hearsay, absent a specific exception. Hearsay is defined by the Rules as Aa statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.@ FRE 801(c). Such a Astatement@ may be either an oral or written assertion, or nonverbal conduct that is intended as an assertion by the person engaging in the conduct (e.g., pointing). FRE 801(a). The Rules provide for self-authentication of certain types of documents such as newspapers and periodicals, as well as records kept in the regular course of business. *See* FRE 902.

U.S. courts may resolve evidentiary issues prior to or during a trial. Resolving as many evidentiary issues as possible prior to a trial helps to make the trial more efficient. This is particularly true in environmental cases where evidence may be highly technical or scientific.

Some evidentiary considerations in environmental cases include:

- § In order to introduce substantive evidence, such as data, a party will need a witness to authenticate it, or to establish that it is self-authenticating under the Rules.
- § If the data itself is not substantively admitted, an expert may review the data and form an opinion based on the data if it is a type reasonably relied upon by experts in the same field.
- § Some questions to answer in deciding whether data should be admitted into

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evidence are: Who took the samples? What protocols did they use? Who analyzed the samples? Who generated the data? Who analyzed the data?

- § Occasionally the parties will stipulate to the admissibility of certain data. This makes the process more efficient.
- § Courts may consider pre-trial motions to admit evidence. These are called motions in limine. If there is any data that is critical to a case, it is helpful to obtain a ruling on its admissibility prior to trial.

The following are some examples of trial exhibits or evidentiary points relating to data evidence:

- § Proffers B A proffer is an offer into evidence. These can be used to explain lines of questioning and give the judge a road map so he or she understands what the trial team is doing.
- § Maps B These can be used to show where samples or other data were collected.
- § Demonstratives B Also called illustrative exhibits, these can outline a line of testimony, graphically explain it, and/or give context to the data. Demonstratives are often not introduced into evidence themselves.