

	<p style="text-align: center;">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. (c) Causation. Author: Andrea L. Berlowe, U.S. Department of Justice.</p>
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Causation in Environmental Cases in the United States

The standards for causation in environmental cases in the United States depend on the particular statute underlying the claim. The following are some examples:

- § The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted to clean up leaking, inactive or abandoned toxic waste sites and provide emergency response to spills of such waste. CERCLA uses a strict liability standard, meaning that a plaintiff need not prove that the actions of a potentially responsible party (APRP) were negligent. 42 U.S.C. § 9601(32). United States courts have uniformly ruled that PRP liability under CERCLA is joint and several if two or more persons have contributed to a single indivisible harm. Thus, each and every PRP at a site where the harm is indivisible can be held liable for the entire cost of site cleanup. In order to pursue natural resource damages, however, a plaintiff must show that the injury for which it seeks damages resulted from the release. 42 U.S.C. § 9607(a)(4)(C).
- § The Clean Water Act (CWA), Clean Air Act (CAA), and the Safe Drinking Water Act (SDWA) all utilize a strict liability standard such that any person who is covered by the statutory or regulatory prohibitions and violates a prohibition is liable for the violation regardless of whether that person was negligent. The CWA outlaws the discharge of any pollutant from any point source by any person into navigable waters of the United States, except in compliance with the CWA. Likewise, the CAA sets emission standards for various air pollutants and requires permits to emit them. If a person holding a permit exceeds the emissions allowed, that person is civilly liable for a violation of the CAA. Increased penalties are available for certain violations that resulted from gross negligence or willful misconduct. In criminal enforcement of these statutes, the government must show that the violator knowingly engaged in the underlying conduct, but not that the violator knew the conduct was illegal.
- § The Resource Conservation and Recovery Act (RCRA) regulates solid and hazardous waste. The objective of the statute is to ensure that hazardous waste management practices are conducted in a manner that protects human health and the environment and minimizes the generation and land disposal of these wastes. At the heart of RCRA's comprehensive system for the regulation of hazardous wastes is a prohibition of the treatment, storage, or disposal of hazardous waste



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except in accordance with an authorized permit. 42 U.S.C. ' 6925(a). To establish liability under this portion of RCRA, the United States must establish the statutory requirements or regulations that applied to the defendant=s treatment, storage or disposal of hazardous wastes, and that the defendant violated those requirements. Where the past or present handling of any waste may present an imminant and substantial endangerment@ to human health or the environment, the government may bring a claim against any person who has contributed to such handling. Like the CWA, CAA, and SDWA, there is no requirement that plaintiff demonstrate negligence on the part of the defendant.