

Presenting Evidence at Trial

Andrew Lauterback
U.S. Environmental Protection Agency

Pretoria, South Africa
27 July 2005

Items To Be Covered

- Key principles for presenting evidence during an environmental trial
- Common types of environmental evidence
- Problems and pitfalls to avoid

Key Principles

- Know your evidence fully!
- Is it relevant and can it be authenticated?
- Work with your experts
- Simplicity and clarity
- Use your most compelling exhibits frequently to keep them before the trier of fact.
- Research the other side's evidence

Is The Evidence Relevant?

- Does the evidence tend to make the existence of a material fact more or less probable than it would be without the evidence?
- Always ask: why do you want that piece of evidence admitted? What element does it prove?

How Do You Prove Reliability?

- The methodology has been tested.
- The methodology has been subjected to peer review.
- There is a known and low margin of error.
- Accepted technique in the scientific community.
- In other words, is it good science?
- Lastly, was it appropriately applied?

Is Evidence Prejudicial?

- All evidence is prejudicial . . .

but although relevant, is probative value outweighed by danger of unfair prejudice, confusion or misleading the trier of fact?



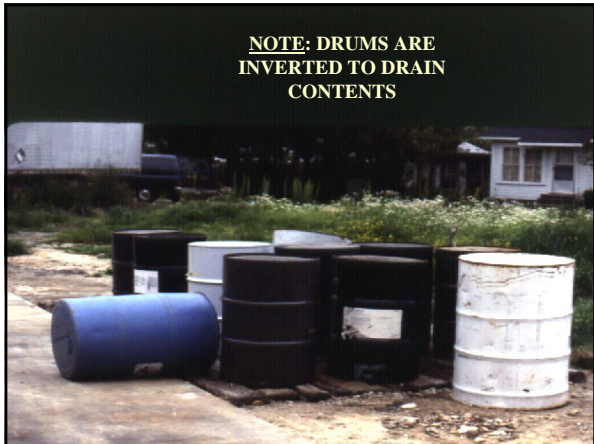
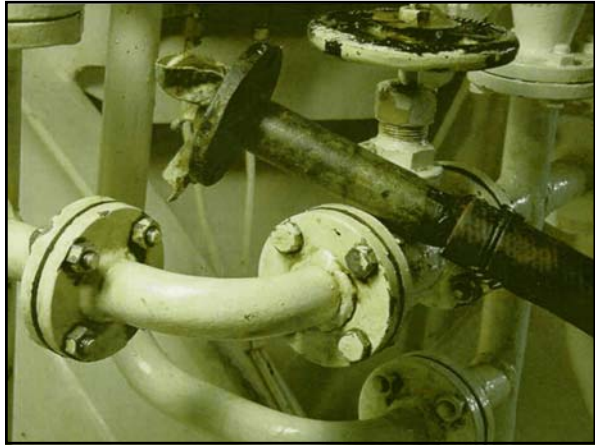
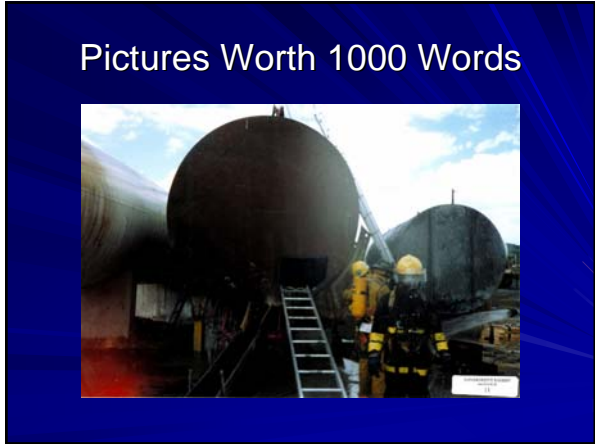
Common Types of Environmental Evidence

- Photographs
- Videos
- Documents
- Samples
- Laboratory Analyses
- Computer Records
- Summaries

Photographic Evidence

- Provide viewer with context and perspective.
- Go from wide angle to close up.
- Film is cheap. You cannot have enough photographs. Worth 1000 words.





Photographs can be used to cure gaps in evidence.



The Dye Test



Videos

- Often used by government during the execution of a search warrant.
- Benefit: Gives a fuller picture of a scene than a still picture.
- Drawback: Can inadvertently capture more than you want.
- Question: sound on or sound off?

Samples

- Foundation question: Is it representative?
- A **representative** sample means a sample of a universe or whole which can be expected to exhibit the average properties of the universe or whole.

How do you establish authenticity?



The log book

- Every field inspector keeps a log book.
- The log book should detail all relevant information about the sampling: where, what, when, how, etc.
- The inspector should **ALWAYS** assume that the log book will be scrutinized by court and defense attorneys.

Chain of Custody

ENVIRONMENTAL PROTECTION AGENCY REGION 1		CHAIN OF CUSTODY RECORD		NO. OF TANKS		REMARKS	
PROJECT NAME DUNSTON ABC Company		NO. OF TANKS		NO. OF TANKS		REMARKS	
DATE/TIME		DATE/TIME		DATE/TIME		REMARKS	
4/18/03	10:30	X	Trip 1	2	2		Trip blank
	10:35		SEP 1	2	1		Duplicate of SEP 1
	10:55		SEP 2	3	1		
	12:00		SEP 3	3	1		
	12:55		SEP 4	3	1		
	13:35		SEP 5	2	1		
	13:55		SEP 6	3	1		
	14:15		Blank 1	1	1		Meatball blank
	14:55		Blank 2	1	1		Water blank

Received by: (Name) Date/Time: 4/18/03 10:30
 Received by: (Name) Date/Time: 4/18/03 10:35
 Received by: (Name) Date/Time: 4/18/03 10:55
 Received by: (Name) Date/Time: 4/18/03 12:00
 Received by: (Name) Date/Time: 4/18/03 12:55
 Received by: (Name) Date/Time: 4/18/03 13:35
 Received by: (Name) Date/Time: 4/18/03 13:55
 Received by: (Name) Date/Time: 4/18/03 14:15
 Received by: (Name) Date/Time: 4/18/03 14:55

1-14565

Using the Actual Sample as a Courtroom Exhibit

- Can be very dramatic.
- Make sure to comply with all applicable environmental, safety and transportation regulations.

Proving Computer Documents Not Tampered With

- Computer Retrieval Software assigns a hash algorithm number for the bytes on the hard drive.
- Determined when mirror image of hard drive accomplished.
- Any tampering of documents would alter hash algorithm number.
- Maintain tight chain of custody and security.

Access to Computer Before Retrieval

- Still must prove that defendant had sole access to computer.
 - Might be in his/her office, but did anyone else use it?
 - Establish by criminal investigation and witness interviews.

Summary Exhibits

- Have a witness or witnesses establish all the underlying evidence and then produce a summary exhibit of that evidence.
- A powerful exhibit that's easy to follow and understand.

Common Evidentiary Problems

- Witness not fully familiar with, and in command of, the evidence.
 - Too much time had passed.
 - Witness did not fully prepare.
 - Wrong witness; e.g., chemist can't testify about sampling episode, or prep chemist different from analytical chemist.

Evidentiary Problems (continued)

- Opposing counsel makes witness defensive about:
 - not following what is characterized as "required" methods.
 - overstating impacts of slight deviations, discrepancies and/or omissions.
 - These things happen.
 - Counsel makes it more technical and complicated than it is.

Evidentiary Problems (continued)

- Divide and conquer
 - Attack the sample as not being representative through sampling witness.
 - Then have analytical chemist testify that if field sample not representative, analyses not good.

Questions?