



E16 State v. Acme Manufacturing Company — A Demonstration Daubert Hearing

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After attending this presentation, attendees will gain a practical understanding of what happens in a *Daubert* hearing. This will be an actual demonstration, with an expert witness, an attorney offering his testimony and an attorney opposing it.

This presentation will impact the forensic community and/or humanity by providing a better understanding of what happens in a *Daubert* hearing and the gatekeeping process which judges apply.

This is a demonstration *Daubert* hearing in a Natural Resources Damages action by the State against Acme Manufacturing Company, based on trichloroethylene (TCE) contamination of groundwater.

Acme operated a manufacturing plant on the site from the 1920s until the 1990s. TCE was used until the late 1980s for cleaning of metals. Until the late 1970s, waste TCE was disposed of in unlined lagoons or dumped “on the back 40,” both in accordance with standard industry practice for the time. After RCRA was enacted and the RCRA regulations were adopted, TCE was disposed of offsite. Until the plant stopped using TCE in the late 1980s, there were periodic TCE leaks and spills.

Soil on the site is contaminated with TCE. The groundwater under the site and to the east of the site is contaminated with TCE. Groundwater flows generally to the east. Acme is conducting remediation under CERCLA and RCRA under a Consent Order with the EPA. The Consent Order sets a cleanup level for TCE in groundwater of 5 ppb, the federal Maximum Contaminant Level (MCL) for drinking water. Acme’s consultant, Deminimus Environmental, has prepared a remedial plan which has been approved by EPA. The remedy includes an iron filings wall to the east of the site. The remedy is expected to take ten to fifteen years to reach the 5 ppb level outside the iron filings wall through natural attenuation.

In this separate court action, the State is seeking Natural Resource Damages for lost use of the groundwater until remediation is complete. The State does not have its own MCL for TCE and it disagrees with the federal level because it does not provide adequate protection.

Dr. Drow is the State’s proposed expert witness on hydrogeology. He is offering opinions on the volume of groundwater loss. His proposed testimony includes the opinion that the safe level of TCE in groundwater is 1 ppb which is the Method Detection Limit. His volume calculations are based on this 1 ppb level. As a fallback, he has also made calculations based on 3 ppb which is the Practical Quantification Limit for TCE.

Acme has filed a *Daubert* motion challenging Dr. Drow’s proposed testimony.

Daubert, Expert Testimony, Admissibility of Opinions