



Chapter 13

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Expert Opinions in Environmental Cases After *Daubert* and Amended Federal Rule 702¹

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§ 13.01. Introduction.²

In 1993, the United States Supreme Court issued its landmark decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,³ which made significant changes in the standards for admissibility of expert opinions in federal courts. An amendment to Federal Rule of Evidence 702, which became effective in December 2000, codified *Daubert's* general approach. Because environmental cases almost always involve scientific issues and expert opinions, *Daubert* and its progeny have had and will continue to have a major impact on environmental litigation.

§ 13.02. The *Daubert* Standards.

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert opinions. The rule, in its original form, provided:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.⁴

In *Daubert*, the Supreme Court held that district court judges have a “gatekeeping role” to determine evidentiary reliability of scientific evidence before it is admitted, and redefined the requirements for admissibility of scientific evidence under Rule 702.

There are accordingly two distinct requirements enunciated in *Daubert*: (1) the procedural gatekeeping function for trial courts and (2) the newly defined substantive analysis for determining admissibility of scientific evidence. The gatekeeping function requires a preliminary

² This chapter is adapted from unpublished course materials prepared by the authors for a course, “Environmental Litigation – Advanced Forensics and Legal Strategies,” presented by the University of Wisconsin - Madison, Department of Engineering in San Francisco, California in April, 2001. Parts of those materials were also used for courses for the Pennsylvania Bar Institute and the Allegheny County Bar Association Environmental Law Section.

³ *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993).

⁴ Fed. R. Evid. 702.