

**“Bad” Contract Language  
Related to Specs and Governing Law  
September 2011**

**Specs**

Seller agrees to supply and Buyer agrees to purchase Petcoke meeting the following specifications in each delivery where the tests for each property below are per applicable ASTM standards.

<b>Property</b>	<b>Spec</b>
Moisture	10 % max
S	4% max (AR)
Ash	1 % max (AR)
Volatile Matter	8-12% typ. (AR)
HGI	35-45 typ.
Size	Run of coker
CV	14,000 BTU/lb (GAR), basis for price adjustment

Sampling and analysis of each delivery to determine the actual chemical and physical properties shall be determined at time of loading the vessel by an Independent lab agreeable to the Parties, who shall prepare a Certificate of Analysis for each delivery (“COA”), and whose result is final and binding on the Parties.

**Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the state of New York, USA.

**Why this is Bad:**

1. Some specs shown as min/max, some as typ., which may be interpreted by some courts as also a spec
2. NO ASTM procedures specified
3. No process for resolution if Buyer disputes the COA, other than go to Court (or arbitration if specified in the contract)
4. Governed by NY law but not required to be conducted in NY court, meaning a dispute can be filed in any court worldwide, but requiring the court to use NY law (which opens up a fresh opportunity for continued legal maneuvering and attorney fees)