

# SPECS AND CONTRACTS— WHAT YOU NEED TO KNOW

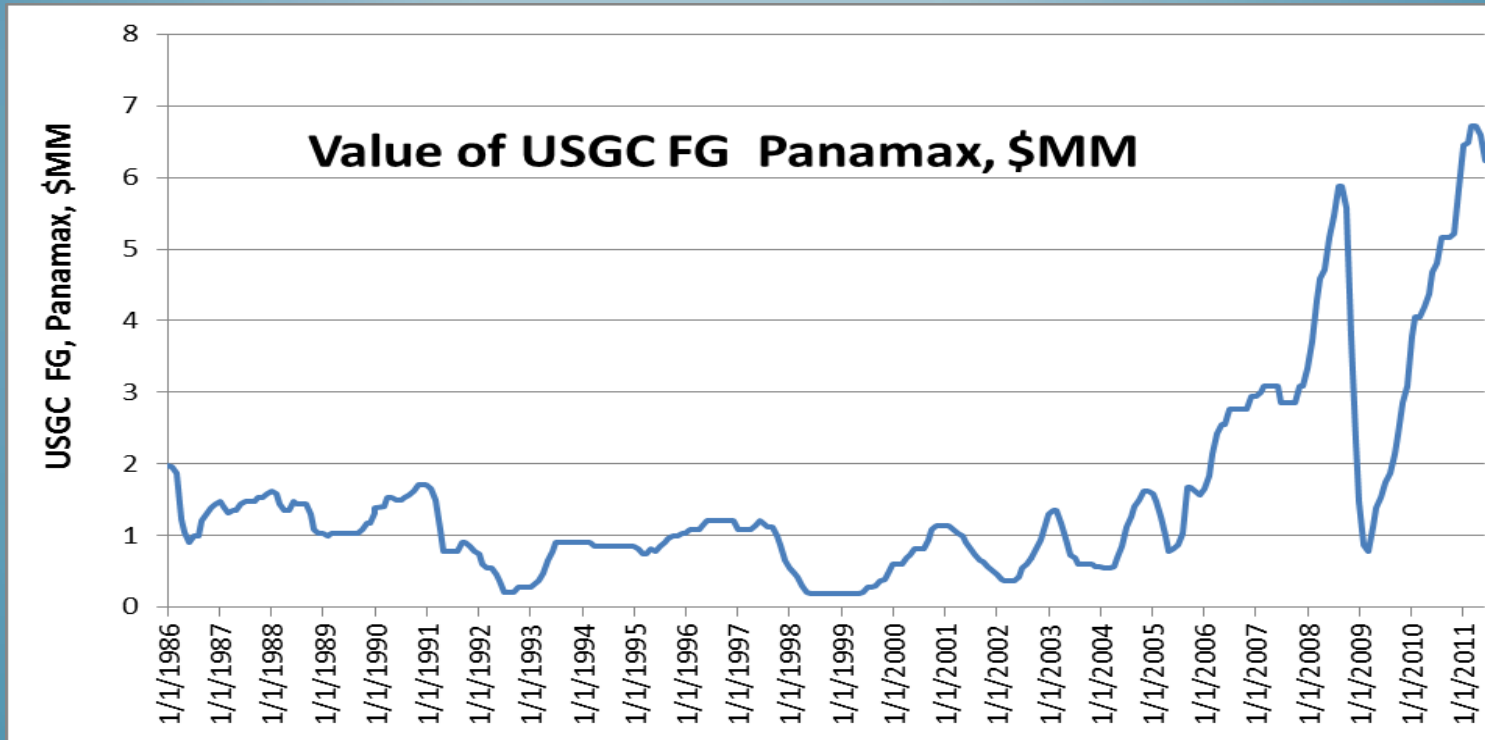
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# Why Care?



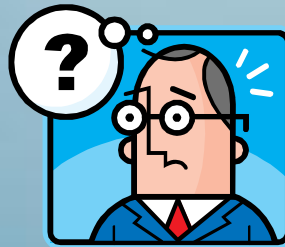
# What we will review for contracts

- A. Collecting, compositing, testing:
  - Who wants what and why
  - The basic 4 sampling and testing strategies
  
- B. Spec tables:
  - Min/Max, Formulas, “Report”
  
- C. Dispute Resolution:
  - How to avoid the courts
  - How to win if it does go to court
  - Good vs. Bad Contract Language
  
- D. Random Hints and Comments



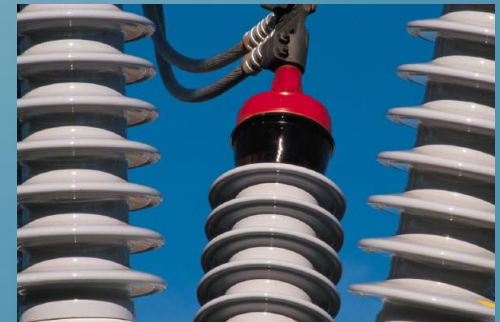


“Coker says: No  
Hard Specs, but  
price formula OK”



**The Problem:  
different needs**

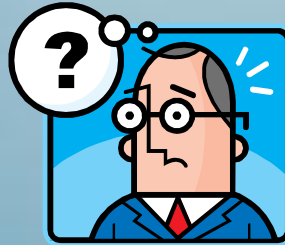
“Buyer says: I  
need hard specs”





“No min/Max specs, formulas for some properties, define test sampling”

**The Answer:**  
**different contracts**  
**With different specs**



“Min/Max specs, no reported ranges, define test sampling”



# **A. Collecting, Compositing, Testing: The Basic 4 Strategies**

- 1. Simple – COA only**
- 2. Cargo Certification (with or without Retain)**
- 3. Cargo Certification with Referee**
- 4. Witnessed Cargo Certification with Referee**



# A. Collecting, Compositing, Testing What, Who and How

## 1. “Simple”:

Plant collects, composites; Independent Lab tests;  
Certificate of Analysis (“COA”) provided,

- Sample may or not be identified
- Typically used where quality does not change
- Both sides trust collection method
- Cokers use for weekly production samples



# A. Collecting, Compositing, Testing: What, Who and How

## 2. “Cargo Certification”

- Lab collects, composites, (or witnesses same)
- Lab tests one sample , provides COA which is binding,
- May or may not retain a split (“Retain”)
- Whether or not “Retain” can be use for Disputes depends on the contract





# A. Collecting, Compositing, Testing What, Who and How

## 3A. “Cargo Certification with Referee”

- Lab collects, composites, documents same
- Lab provides 4 splits: Lab, Buyer’s Retain, Seller’s Retain, Referee
- Lab does not know the contract min or max, formulas, etc.
- Lab sample used for COA, Contract Spec reject, price adjustment formulas

(continued)



# A. Collecting, Compositing, Testing What, Who and How

## 3B. “Cargo Certification with Referee” cont’d

- Disputes settled only by Referee sample analyzed by another lab agreeable to both Parties which is binding.
- Referee sample requires “chain of custody”
- No other test, regardless of who, where, how collected, matters or is binding



# A. Collecting, Compositing, Testing What, Who and How

## 4. “Witnessed Cargo Certification”

Same as number 3, except independent contractor witnesses all collection, compositing and testing for conformance

- Mostly used where there is history of disputed collection, compositing, testing practices
- Obviously , very expensive



# B. Spec Tables

## Contract Requirements by Property:

- Min/max only if Reject
- Price Formulas with or without min/max
- Must have ASTM for each and whether AR or Dry basis
- If Report Only (HGI, shot, etc.), better to leave out of spec table. If historical ranges quoted, need to be clear that out of range is NOT a reject.



# C. Dispute Resolution 1

## How to Avoid the Courts

- **Absolute clarity**
  - what specs constitute Reject and which do not;
  - collection, composite and test process
  - which sample is binding
- **See Good vs. Bad language in Documents Tab in [www.petcokeconsulting.com](http://www.petcokeconsulting.com)**



## Guaranteed Properties

Seller agrees to supply and Buyer agrees to purchase Petcoke meeting the following specifications in each delivery by vessel to Buyer. Any property falling outside of the min or max specified below allows the Buyer the sole option of accepting or rejecting such delivery.

Guaranteed Properties					
Property	Units	Basis*	Min	Max	ASTM
Moisture	%	AR	8.30	10.00	D4931
Sulfur	%	AR		4.00	D4239-B
Ash	%	AR		1.00	D4422

\*Basis: AR = As received, Dry = after moisture removed,

## Reported Properties

The following properties of each delivery by vessel to Buyer will be reported only and cannot be used by either Party to accept or reject such delivery.

Reported Properties			
Property	Units	Basis*	ASTM
VCM	%	AR	D6374
HGI			D409
Size			D5709
CV	BTU/lb	GAR**	D5865

\*\*Basis GAR = Gross As Received

# C. Dispute Resolution 2

How to win in Court (if you have to go)

- See Item 1 previous page
- Contract must define governing law for dispute resolution, and also the governing court (e.g., NY law in a NY court)
- Understand the typical industry practice





# C. Dispute Resolution 3

## Caution:

*No matter how good your contract, and how well you prepare, strong incentives may arise for the counter party to be very ingenious and aggressive about claims.*



# Random Hints and Comments 1

- Shot has no ASTM test.
- HGI : The ASTM test has poor repeatability (2 HGI points) and reproducibility (3 HGI points)
- BTU: Volatiles have more than 2 times the BTU content of pure Carbon.



# Random Hints and Comments 2

- **Lump vs. Fines:** Lump coke is harder, and likely has lower sulfur and higher metals than fines from same coke drum cut
- **2 Stage mechanical belt samplers**
  - more frequent than manual
  - equal treatment of lumps and fines
  - Better representation of cargo



Good specs =



# Bad Specs =

