

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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5       IN THE MATTER OF:

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7       Petition of Chemetco, Inc. for

8       an Adjusted Standard from 35 Ill.       No. AS 97-002

9       Adm. Code 720.131 (a) and (c)

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13                       Supplemental hearing held on August 26th,

14       1997, at 9:55 a.m., at the State Regional Office

15       Building, IDOT Classroom, 1100 East Port Plaza

16       Drive, Collinsville, Illinois, before the Honorable

17       Michael L. Wallace, Hearing Officer.

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21                       Reported by: Darlene M. Niemeyer, CSR, RPR

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A P P E A R A N C E S

STATE OF ILLINOIS, OFFICE OF THE ATTORNEY  
GENERAL

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I N D E X

WITNESS	PAGE NUMBER
David Hoff	6, 10, 45, 58

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Exhibit 18	--	61
Exhibit 19	--	61

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P R O C E E D I N G S

(August 26, 1997; 9:55 a.m.)

HEARING OFFICER WALLACE: Pursuant to the direction of the Illinois Pollution Control Board, I now call Docket AS 97-002. This is the matter of the Petition of Chemetco, Inc. seeking an Adjusted Standard under 35 Illinois Administrative Code 720.131, Sections (a) and (c).

May I have appearances for the record, please. For the Petitioner?

MR. VON STAMWITZ: George M. Von Stamwitz, with the law firm of Armstrong, Teasdale, Schlafly & Davis, on behalf of the Petitioner, Chemetco.

MR. WATERS: Richard L. Waters, from Armstrong, Teasdale, on behalf of the Petitioner, Chemetco.

HEARING OFFICER WALLACE: For the Agency, please?

MR. PERZAN: For the Agency, Christopher Perzan.

MR. MORGAN: James Morgan, for the Illinois Attorney General's Office.

HEARING OFFICER WALLACE: All right. Let

1 the record reflect that there are no other  
2 appearances at today's hearing.

3           This matter was previously heard, I  
4 believe, March 11th of 1997. Briefs were filed  
5 and, I believe, in response to post hearing  
6 filings, the Pollution Control Board entered an  
7 order on May the 15th sending this back to hearing  
8 to clarify certain of those motions to add  
9 information to the hearing. Basically it looks  
10 like the Board wants the Petitioner to supplement  
11 the record with an English translation of certain  
12 Spanish documents and certain other agreements.

13           There was an affidavit of Mr. David Hoff  
14 that the Board felt that would not allow the Agency  
15 to properly cross-examine so, therefore, they sent  
16 it back to hearing. Notice was sent out and we are  
17 here. All right. There were no preliminary  
18 matters before we went on the record.

19           Mr. Von Stamwitz, do you have an opening  
20 argument or statement that you wish to make at this  
21 time?

22           MR. VON STAMWITZ: We would waive any  
23 opening statement and proceed directly to  
24 testimony, if it pleases the Board.

1 HEARING OFFICER WALLACE: All right. Mr.  
2 Perzan?

3 MR. PERZAN: That's fine with me.

4 HEARING OFFICER WALLACE: And Mr.  
5 Morgan?

6 MR. MORGAN: That's fine, Your Honor.

7 HEARING OFFICER WALLACE: All right. Mr.  
8 Von Stamwitz, do you have a witness?

9 MR. VON STAMWITZ: The Petitioner will  
10 call Mr. David Hoff.

11 (Whereupon the witness was  
12 sworn by the Hearing Officer.)

13 HEARING OFFICER WALLACE: All right. You  
14 may proceed.

15 D A V I D H O F F,  
16 having been first duly sworn by the Hearing  
17 Officer, saith as follows:

18 DIRECT EXAMINATION

19 BY MR. VON STAMWITZ:

20 Q Would you state your name for the record,  
21 please.

22 A David Hoff.

23 Q And, Mr. Hoff, are you employed, sir?

24 A Yes.

1 Q Where are you employed?

2 A Chemetco.

3 Q In what capacity?

4 A President.

5 Q You testified previously on March 11th of  
6 1997; is that correct, in this hearing?

7 A That's correct.

8 Q I am going to hand you a group of  
9 documents that have been labeled Petitioner's  
10 Exhibit 18, and I am going to ask you to look over  
11 those documents and tell me, in their entirety,  
12 what those documents are?

13 A These are documents from various  
14 governmental agencies giving approval to ship the  
15 copper tin oxides into Spain.

16 Q Again, that relates to what transaction  
17 that Chemetco has with the Spanish entity?

18 A The shipping of material to Spain.

19 Q Who was the customer in Spain?

20 A Oh, Elmet. I am sorry. Elmet.

21 Q Now, when that -- was that document  
22 received by Chemetco in the ordinary course of  
23 business?

24 A I am sorry?

1           Q     Was that -- was a form of this document  
2 received by Chemetco in the ordinary course of  
3 business?

4           A     Yes, it was.

5           Q     When it was received by Chemetco, what  
6 language was it in?

7           A     Spanish.

8           Q     Now, I am going to direct you to the  
9 exhibit, particularly to the portions that are  
10 marked 18-1S, and then there are other documents,  
11 18-2S. As you look through the document the pages  
12 that are so numbered, what are they?

13          A     Those particular documents are in  
14 Spanish.

15          Q     Then if you look at the portions of the  
16 document labeled 18-1E and so forth, what are those  
17 pages?

18          A     Those pages of the document are in  
19 English.

20          Q     I will direct you to the first page of  
21 the document that is just labeled 18, and what is  
22 that page, please?

23          A     That is -- the Caldon (spelled  
24 phonetically) International Communications,

1 Incorporated, translated this document from Spanish  
2 to English. That is the certification that they  
3 did that.

4 Q Did you authorize Chemetco to pay for  
5 that service after receiving the order from the  
6 Board?

7 A Yes, I did.

8 Q I am next going to hand you what has been  
9 marked Petitioner's Exhibit Number 19, and ask if  
10 you can identify that document, please?

11 A This document is the current agreement  
12 with Elmet and -- between Elmet and Chemetco.

13 Q What is the date of that document,  
14 please?

15 A April 1, 1997.

16 Q Was that executed by representatives from  
17 Chemetco after the last hearing in this matter on  
18 March 11, 1997?

19 A Yes, it was.

20 Q Is that contract different in any way  
21 than the relationship between the parties in the  
22 previous year?

23 A No.

24 MR. VON STAMWITZ: We have no further

1 questions.

2 HEARING OFFICER WALLACE: All right.

3 MR. PERZAN: Are you going to offer those  
4 into evidence after all of this?

5 MR. VON STAMWITZ: I was. I could do it  
6 now if that would be better.

7 MR. PERZAN: No, that's fine. Just so I  
8 understand.

9 HEARING OFFICER WALLACE: Mr. Perzan?

10 MR. PERZAN: Yes, I have a few  
11 questions.

12 CROSS EXAMINATION

13 BY MR. PERZAN:

14 Q Those government documents that make up  
15 Exhibit 18, and when I say 18, I mean all of the  
16 1s, 1E, 1S, all of that, those also reflect  
17 application from Chemetco to Spain, correct?

18 A I am not sure I understand the question.

19 Q Well, some of these documents are things  
20 that you submitted to Spain?

21 A (Witness reviewed documents.) Yes.

22 Q Okay. So is it correct to characterize  
23 these as an application that Chemetco submitted to  
24 the Government of Spain, and then a responsive

1 document by the Government of Spain to Chemetco?

2 A Ask me that again, please.

3 Q Is it correct to characterize these  
4 documents, and I am talking about all of them, this  
5 series of documents, as a couple of documents that  
6 you submitted to the Government of Spain and then  
7 their reply to you?

8 A (Witness reviewed documents.) This one  
9 was sent by Dennis Meyer. It appears that this  
10 page did, by Dennis Meyer.

11 Q What page was that?

12 A One.

13 Q That's marked as 18-2S, is that the one  
14 you are looking at?

15 A Yes.

16 Q Did you prepare these documents?

17 A No, I did not personally prepare these.

18 Q Did you see them being prepared?

19 A No, I did not see them being prepared.

20 Q Do these documents mention zinc oxide  
21 anywhere on them?

22 MR. VON STAMWITZ: It is a long  
23 document. Is there a page you want him to refer to  
24 or would you rather he just thumb through it?

1 MR. PERZAN: Yes, anywhere.

2 THE WITNESS: (Witness reviewed  
3 documents.) No, I don't see it.

4 Q (By Mr. Perzan) Okay. I am going to  
5 refer you to 18-2E. That's the first or it is the  
6 second English translation. What is the title of  
7 this document?

8 A 18-2A?

9 Q Yes, 2E?

10 A Oh. Okay. European community.

11 Q Is there another title?

12 A Oh. Okay. Cross border waste shipments.

13 HEARING OFFICER WALLACE: I am sorry.  
14 What page are you on?

15 MR. PERZAN: 18-2E.

16 HEARING OFFICER WALLACE: Okay.

17 Q (By Mr. Perzan) So how would you  
18 characterize this document?

19 A I am sorry?

20 Q How would you characterize this  
21 document? This is the application for the shipment  
22 of waste into Spain?

23 MR. VON STAMWITZ: Objection. The term  
24 "waste" means different things in different

1 countries. If he is talking about using the  
2 American terminology or the European terminology it  
3 is important that he reference that.

4 Q (By Mr. Perzan) Does any country involved  
5 in this transaction, Spain or the United States,  
6 does either of them consider this substance that  
7 you shipped there a waste?

8 A As I understand it, the European  
9 documents carry the term "waste" as a broad  
10 category for many materials, okay. I don't think  
11 they term it as we term a RCRA waste, a hazardous  
12 waste. It is used in two different meanings. Have  
13 we ever been disallowed to ship this material to  
14 Europe, no.

15 Q That wasn't my question. Is it  
16 Chemetco's position that this is not a regulated  
17 waste under RCRA?

18 A We are shipping copper tin oxides into  
19 Spain, a product.

20 Q Do those copper tin oxides have the zinc  
21 oxide mixed with it?

22 A Yes, they do.

23 Q Is there any requirement that you reveal  
24 that zinc oxide is mixed in with the copper tin

1 oxides on these permits to Spain?

2 A Our zinc oxide is a product.

3 Q Under Spanish law or American law?

4 A It is a product to ship, and the Spanish  
5 Government has said it is okay to come into their  
6 country.

7 Q But the Spanish Government does not know  
8 that you are shipping zinc oxide into Spain, based  
9 on these documents?

10 MR. VON STAMWITZ: Objection. Are you  
11 saying --

12 Q (By Mr. Perzan) Based on these documents,  
13 is it revealed that this zinc oxide is going to  
14 Spain?

15 MR. VON STAMWITZ: I believe the  
16 documents speak for themselves that copper tin  
17 oxides are going to Spain.

18 MR. PERZAN: Well, we have already  
19 established that zinc oxide is not listed on this  
20 document.

21 Q (By MR. Perzan) So is it fair to say that  
22 based on these documents Spain does not know that  
23 zinc oxide is going into Spain?

24 A The chemical analysis of the product

1 being shipped to Spain is on this document, and  
2 they have approved the chemical analysis of that  
3 product to come into their country.

4 Q Okay. Have you ever done a hazardous  
5 waste determination on the zinc oxide that you are  
6 currently shipping to Spain?

7 A I don't know the answer to that.

8 MR. VON STAMWITZ: Let me object to  
9 that. I don't know how that is relevant to the  
10 narrowness of this proceeding. We are talking  
11 about -- we all know that the disposition of  
12 something affects its characterization. This  
13 material is handled as a product, and no hazardous  
14 waste characterization is done on it.

15 MR. PERZAN: I think that Chemetco has  
16 opened the door to this because they submitted this  
17 and claimed that Spain considers it one thing and  
18 that the United States considers it another. I am  
19 just trying to get to the differences.

20 HEARING OFFICER WALLACE: All right. Mr.  
21 Hoff, would you answer the question, please.

22 THE WITNESS: Would you ask it again,  
23 please.

24 Q (By Mr. Perzan) Has Chemetco ever done a

1 hazardous waste determination with regard to the  
2 zinc oxide currently being shipped to Spain?

3 A I don't believe so.

4 Q Okay. Would anyone know for sure in your  
5 organization?

6 A It would have to be checked out.

7 Q How does the chlorine get into the  
8 materials that are shipped to Spain?

9 A If there is chlorine in the incoming  
10 product it would end up in the zinc oxide.

11 Q So there is chlorine in the incoming  
12 product?

13 A I don't know that.

14 Q Well, I would just refer you to the  
15 document, either one of the documents, that is  
16 18-2S or 18-3S, for their equivalent Spanish or  
17 English translation, Number 13, where it lists the  
18 composition of the materials being sent to Spain.  
19 I believe the last thing says .3 CL?

20 A Yes.

21 Q So do you know how the chlorine gets into  
22 the zinc oxide?

23 A I do not know where that came from.

24 Q Could it come from the zinc oxide?

1 A I do not know where that came from.

2 Q So it might come from the zinc oxide?

3 A I would doubt that it would come from the  
4 zinc oxide.

5 Q Okay. But you are not sure?

6 A (No response.)

7 Q I want to refer you to, on the English  
8 translation, 18-2E, line 3E, where the evaluation  
9 process, I believe, has a check there. Can you  
10 tell me what that means?

11 MR. VON STAMWITZ: No objection, if the  
12 witness knows.

13 THE WITNESS: I don't know.

14 Q (By Mr. Perzan) Does it seem to you that  
15 20,000 metric tons or 20 million kilograms is an  
16 awful lot for evaluation of this material?

17 MR. VON STAMWITZ: Objection. There is  
18 no foundation for that question. Counsel had all  
19 the opportunities in the world to take all the  
20 depositions he wanted regarding these documents and  
21 he didn't. This witness said he doesn't know what  
22 that term means.

23 MR. PERZAN: I don't know what whether or  
24 not we had taken depositions has to do with this.

1                   MR. VON STAMWITZ: This is not a  
2 discovery conference here. This witness does not  
3 know what that term means. You are asking him  
4 questions about it.

5                   HEARING OFFICER WALLACE: All right. To  
6 the extent that the Board referred this matter back  
7 to hearing to go into this exhibit, I think it is a  
8 reasonable question. The objection is overruled.

9                   Answer the question, please, Mr. Hoff.

10                  THE WITNESS: Would you ask it again,  
11 please?

12                  Q     (By Mr. Perzan) Does it seem like 20,000  
13 metric tons or 20 million kilograms of this  
14 material is a large amount for an evaluation, using  
15 the generally understood meaning of the term  
16 evaluation?

17                  A     By the Spanish Government, do you mean?

18                  Q     By Elmet.

19                  A     I am not sure I understand the question  
20 yet.

21                  Q     Okay. Let's back up a little bit, then.  
22 Apparently, Chemetco is shipping this material to  
23 Elmet, correct?

24                  A     Correct.

1 Q In this permit application to the Spanish  
2 Government, Chemetco said they are shipping it for  
3 an evaluation process, correct?

4 A I don't know what that evaluation is for.

5 Q Well, do you know what evaluation means?  
6 Do you know what the word evaluation means?

7 A I do.

8 Q Can you tell me what you think it means?

9 A That they are going to evaluate the  
10 material we are sending to them, Elmet.

11 Q Okay. Does that mean that they may not  
12 accept it?

13 HEARING OFFICER WALLACE: "They" meaning  
14 Elmet?

15 MR. PERZAN: Yes, Elmet. Thank you.

16 THE WITNESS: Elmet is going to check the  
17 chemistry. They are going to do their own analysis  
18 on the material when we ship it to them.

19 Q (By MR. Perzan) So I will ask that  
20 question again. Do you think that 20,000 metric  
21 tons is an awful lot for an evaluation?

22 MR. VON STAMWITZ: I will object just on  
23 the notion that it is 20 million kilograms, is what  
24 the document says.

1 MR. PERZAN: Okay. 20 million kilograms.

2 Q (By MR. Perzan) Do you think 20 million  
3 kilograms is a lot for an evaluation?

4 A For?

5 Q For the evaluation purposes?

6 A They are not going to evaluate all 20  
7 million kilograms.

8 Q Okay. So what are they going to do with  
9 the rest of it?

10 A That, you would have to ask them.

11 Q You don't know?

12 A I don't know what Elmet is going to do.

13 Q Looking at number five of the same  
14 document, Chemetco has a total estimated amount  
15 there. Can you tell me what that is?

16 A I am sorry. Where are you?

17 Q Page five. Not page five. Excuse me.  
18 It is paragraph five.

19 A What's the question?

20 Q Can you tell me what the estimated amount  
21 that Chemetco is going to send over is?

22 A It is about 4,000 tons a month.

23 Q Is that what that says there?

24 A I am sorry. That says 20 million

1 kilograms.

2 Q How much is that in tons?

3 A About 4,000 tons a months.

4 Q How much is that in tons total? How much  
5 is this number rendered into tons? Not per month.

6 A It is right at 4,000 tons.

7 Q I am not talking about per month, sir. I  
8 am talking about the number here in tons.

9 A Uh-huh.

10 MR. VON STAMWITZ: I think he has  
11 answered the question that --

12 MR. PERZAN: No.

13 HEARING OFFICER WALLACE: I don't believe  
14 he has either. This 20 million kilograms is not  
15 expressed in 20 million kilograms per month. You  
16 are expressing a tonnage figure per month. What is  
17 the overall tonnage figure that the 20 million  
18 kilograms represents?

19 THE WITNESS: I think it is about 4,000  
20 tons, isn't it?

21 Q (By Mr. Perzan) Do you know how many  
22 kilograms in a metric ton?

23 A Oh, in a metric ton?

24 Q Yes.

1           A     No, I don't.

2           Q     Okay.  Could it be 1,000?

3           A     I said I don't know.

4           Q     You don't know.  Okay.  That's fine.  Did  
5 you prepare for this hearing?

6           A     Yes.

7           Q     Did you look at these numbers?

8           A     Yes.

9           Q     Okay.  Did you talk about this with Mr.  
10 Von Stamwitz?

11          A     Yes.

12          Q     Okay.  Thank you.  Referring you again to  
13 Number 13, paragraph 13 of that, it is a couple of  
14 pages down, I think.  It is one page down.  Can you  
15 tell me what the composition of the zinc oxide is?  
16 The zinc.  Excuse me.

17          A     The copper tin oxides?

18          Q     The composition of the zinc as it is  
19 listed within the copper tin oxides?

20          A     It is 23 percent moisture, 16.8 percent  
21 luson (spelled phonetically) ignition, 22.8 percent  
22 copper, 9.5 percent zinc, 2.7 percent iron, a half  
23 percent nickel, and .3 chlorine.

24                   HEARING OFFICER WALLACE:  If I might

1 interject, what does luson ignition mean?

2 THE WITNESS: I am not sure I know how  
3 they interpret that term.

4 HEARING OFFICER WALLACE: All right.

5 Q (By Mr. Perzan) Does the number for zinc  
6 there match Chemetco's specifications as they were  
7 indicated in the Attachment 4 to the petition?

8 A Attached to where?

9 Q Attachment 4 to the petition. If you  
10 don't recall that, I have a copy of it here to help  
11 your memory.

12 A (Witness reviewed document.) No, it does  
13 not match identical.

14 Q Is it higher or lower?

15 A Than what?

16 Q Is it higher or lower? Is it a higher  
17 number or a lower number than --

18 A The zinc?

19 Q Yes.

20 A The zinc is lower here.

21 Q Okay. Let's move on to the contract  
22 here, Exhibit 19. Did you draft this?

23 A No.

24 Q Did you see it drafted?

1           A     No.

2           Q     Do you know who drafted it?

3           A     Yeah, I believe it was drafted by George.

4           Q     Mr. Von Stamwitz?

5           A     Mr. Von Stamwitz, sir.

6           Q     Okay. Did you testify earlier at the

7     March proceeding that the current contract with

8     Elmet was for 1,500 tons per month?

9           A     Yes, I did.

10          Q     Did you testify that that amount

11     reflected a reduction from previous contracts?

12          A     A reduction from previous contracts?

13          Q     Yes.

14          A     I don't remember. I may have.

15          Q     Okay. Would it help you to look at the

16     transcript?

17          A     It would, yes.

18          Q     At seven and eight.

19          A     Eight?

20          Q     Yes.

21          A     (Witness reviewed transcript.) Yes, I did

22     say that.

23          Q     Did you do anything after that hearing

24     that would have led you to change your testimony?

1 Well, let's back up here. I withdraw that  
2 question.

3                   Currently, how much is the contract --  
4 how much can you send to Elmet based on your  
5 current contract of the copper tin oxides?

6           A     It is 3,000 tons per month.

7           Q     Is that the same as the contract you had,  
8 say, in 1996?

9           A     I don't remember 1996. I believe it was  
10 1,500 then.

11          Q     So you are saying it is higher now?

12          A     It is more tonnage.

13          Q     More tonnage. Did anyone tell you to  
14 change your testimony today?

15                   MR. VON STAMWITZ: I am going to object.  
16 I believe under recross in the old hearing we went  
17 over this, the distinction between the actual sales  
18 every month, which is 1,500 versus the potential  
19 sales.

20                   MR. PERZAN: I don't think so.

21                   MR. VON STAMWITZ: It was briefed and  
22 discussed. Then on redirect we went over this in  
23 some detail. We can go over it again, if you would  
24 like.

1 HEARING OFFICER WALLACE: Are you  
2 objecting or --

3 MR. VON STAMWITZ: I am objecting to the  
4 line of questioning.

5 HEARING OFFICER WALLACE: All right.

6 MR. VON STAMWITZ: We have a contract  
7 here for 1997. We can ask about what is happening  
8 in 1997, if you would like. But this distinction  
9 between 1,500 and 3,000 has been discussed and  
10 briefed, and I think we are going over old  
11 territory.

12 HEARING OFFICER WALLACE: Your response?

13 MR. PERZAN: I think the witness has  
14 clearly testified two different ways, and I think  
15 we are entitled to explore that.

16 HEARING OFFICER WALLACE: All right. The  
17 objection is overruled. Go ahead.

18 Q (By Mr. Perzan) Did anyone tell you to  
19 change your testimony?

20 A What do you mean, did anybody tell me to  
21 change my testimony?

22 Q Did anyone tell you that you should  
23 change your testimony after the March 11th hearing?

24 A I believe what happened at the March 11th

1 hearing is that I was under the impression that  
2 this was a new contract, and all this is is an  
3 approval.

4 Q And "this" is? You are referring to --

5 A May I finish?

6 Q I just want to make --

7 HEARING OFFICER WALLACE: When you say  
8 "this," what --

9 THE WITNESS: Oh, this document?

10 HEARING OFFICER WALLACE: Identify it so  
11 that we know what you are talking about when you  
12 say "this".

13 THE WITNESS: The approval to ship in by  
14 the government agencies to ship to Spain. At that  
15 point in time I thought this was the contract. I  
16 was wrong. That was not the contract. This is the  
17 contract for 3,000 tons a month for the year of  
18 1997.

19 Q (By Mr. Perzan) Okay. When did you learn  
20 this? When did you learn that you were mistaken?

21 A When I found out that we didn't have the  
22 contract yet, that this was just the approval to  
23 ship by the government agencies.

24 Q Who told you that?

1           A     I don't remember.

2           Q     Were you aware after the March 11th  
3 hearing that your testimony at the hearing could  
4 hurt Chemetco's chances to get an Adjusted  
5 Standard?

6           A     I am not sure how I could hurt Chemetco.

7           Q     You don't understand the question?

8           A     I don't understand the question.

9           Q     Were you aware that a reduction in the  
10 amount of materials that you were able -- that  
11 Chemetco was able to send to Elmet might hurt the  
12 chances of Chemetco to receive an Adjusted  
13 Standard?

14          A     At the time I thought that the contract  
15 was for 3,000 tons to go to Elmet, okay, and that's  
16 500 tons, the way I calculate it, a month excess,  
17 which is 6,000 tons a year which give or take about  
18 what is in the bunker, that is pretty close to five  
19 years. Now, there is no reason for me to believe  
20 that we wouldn't continue to do business with Elmet  
21 for a long time. There is also no reason for me to  
22 believe that we wouldn't have other customers over  
23 the five year period for zinc oxide.

24          Q     What was it specifically that led you to

1 testify on March 11th that there was a reduction in  
2 1997 from the previous contract?

3 A May I --

4 MR. VON STAMWITZ: Objection. A  
5 reduction from 1997 to the previous contract?

6 MR. PERZAN: He testified that way. What  
7 is your -- what are you objecting to?

8 MR. VON STAMWITZ: Is there in the record  
9 anywhere stated there was a reduction from 1997  
10 from what was previous?

11 MR. PERZAN: It may not say the dates.  
12 If that's the basis for your objection I will  
13 modify it and remove the dates and just say the  
14 previous contract.

15 MR. VON STAMWITZ: I just don't think  
16 that's an accurate statement.

17 HEARING OFFICER WALLACE: Do you have a  
18 reference to the prior transcript?

19 MR. PERZAN: Yes, it is page 56, line 8  
20 through 11.

21 HEARING OFFICER WALLACE: All right. The  
22 section you quote does not mention any specific  
23 years.

24 MR. PERZAN: Okay. So I will rephrase my

1 question then.

2 Q (By Mr. Perzan) What led you to believe  
3 that there was a reduction from 300 tons per month  
4 under the prior agreement?

5 A May I read that again? (Witness reviewed  
6 the transcript.)

7 MR. VON STAMWITZ: Mr. Wallace, while he  
8 is doing that, I would like to, for the record,  
9 give permission to allow Mr. Hoff to read other  
10 portions of the record on the same topic so he  
11 might be educated on this question. I think he is  
12 referring just to specific things that redirect  
13 talked about in some detail, as well, that I would  
14 like to ask Mr. Hoff to review.

15 HEARING OFFICER WALLACE: Well, I think  
16 that Counsel is allowed to explore Mr. Hoff's  
17 memory and his testimony based upon this new  
18 document. So I think that he should first of all  
19 answer the question that is pending, based upon  
20 page 56 of the prior transcript.

21 MR. VON STAMWITZ: All right.

22 HEARING OFFICER WALLACE: Have you read  
23 those lines, Mr. Hoff?

24 THE WITNESS: Yes.

1 HEARING OFFICER WALLACE: Can you answer  
2 the question?

3 THE WITNESS: In 1996 the contract may  
4 have been for 1,500 tons, and in 1997 the contract  
5 is for 3,000 tons per month, and you are referring  
6 to Mr. Kotter's affidavit in there and asking me  
7 what the difference is between Mr. Kotter's  
8 affidavit and the 1,500 tons. Is that what you are  
9 referring to?

10 Q (By Mr. Perzan) All I am referring to is  
11 what your statement was.

12 A That it was 1,500 tons in 1996 or a year,  
13 and now it is 3,000 tons in 1997?

14 Q So how is it changed now?

15 A It has gone up.

16 Q It has gone up. I still don't understand  
17 why you would have said that -- that you would have  
18 agreed with the assertion that -- I will read it.  
19 "And that is a reduction from the 3,000 tons per  
20 month under this prior agreement." And you said  
21 "that's correct."

22 I still don't understand why you agreed  
23 with that, because it is pretty clear that is  
24 talking about a reduction and not an increase.

1           A     Because I believe that -- may I answer  
2 that?

3           Q     Yes, please.

4           A     I believe in there that is referring to  
5 what I thought was a prior contract, which is 1,500  
6 tons, okay. Now it has gone to 3,000 in 1997. You  
7 are referring to the difference between Mr.  
8 Kotter's affidavit and that day. Mr. Kotter had  
9 said 3,000 tons for whatever year. I had said  
10 1,500 tons for 1996 or 1995, whatever year. The  
11 new contract is for 3,000 tons. You are comparing  
12 Mr. Kotter's affidavit to contracts.

13          Q     Well, Mr. --

14          A     Mr. Kotter had said the 3,000 tons.

15          Q     I believe the petitioner had said 3,000  
16 tons, as well.

17          A     That's what I just read in there. You  
18 asked him what the difference was between Mr.  
19 Kotter's 3,000 tons and my 1,500 tons.

20                   MR. PERZAN: Just to be clear, I would  
21 like to point out that this is during Mr. Morgan's  
22 cross-examination of Mr. Hoff, and not mine.

23          Q     (By Mr. Perzan) So does Mr. Kotter's  
24 affidavit that was attached to the petition state

1 that Chemetco had a renewable contract with Elmet  
2 to sell 3,000 tons of oxide per month?

3 A I don't have Mr. Kotter's affidavit  
4 (Witness reviewed document.) Yes, he does say  
5 that.

6 Q So Mr. Kotter in that affidavit was  
7 talking about the contract that Chemetco claims it  
8 has with Elmet during that period, correct?

9 A Which period?

10 Q The time when the petition was filed.

11 A I can't answer for Mr. Kotter.

12 Q You can't. Okay. Well, was there a  
13 contract for 3,000 tons per month with Elmet, tons  
14 of oxides per month at the time that this was  
15 submitted to the Board?

16 A What's the date?

17 Q June 6, 1996, I believe, the date is.  
18 Actually, I think it is on that --

19 A June 6, 1996?

20 Q Yes. I think it is on the last page  
21 there.

22 A Uh-huh. I don't know the answer to that  
23 in June of 1996.

24 Q So you don't know whether this is true or

1 not?

2 A Whether what is true?

3 Q Whether the affidavit was true or not?

4 A I have not seen the 1996 contract.

5 Q So the way I gather your testimony is  
6 that you have just said that the contract now with  
7 Chemetco is an increase from the one that was  
8 testified to by Mr. Kotter in this affidavit; is  
9 that correct?

10 A No. The contract for 1997 is 3,000 tons  
11 a month.

12 Q Yes.

13 A Mr. Kotter also talks about 3,000 tons  
14 per month.

15 Q Okay. Correct me if I am wrong here, but  
16 I thought you just testified that the reason that  
17 you agreed with the statement that the 3,000 tons  
18 was a reduction from the prior agreement was that  
19 the current contract or the new contract was for  
20 more, if I understood your testimony correctly?

21 A It is my opinion that in 1996 the  
22 contract was for 1,500 tons a month and it went to  
23 3,000 tons in 1997.

24 Q So when you testified at the hearing on

1 this matter on March 11th you thought that the  
2 contract was for only 1,500 tons per month, just  
3 rephrasing what you just said; is that correct?

4 A I thought the contract before was for  
5 1,500 tons. The new contract was for 3,000 tons.  
6 I also thought that this exhibit, Exhibit 18, was  
7 the contract. It was not the contract. I was  
8 wrong. It was just the permission to ship into  
9 Spain. Now we have the contract and it is 3,000  
10 tons per month, which is Exhibit 19.

11 Q So on March 11th had you read the  
12 petition?

13 A I am sorry?

14 Q Had you read the petition or reviewed the  
15 petition in preparation for your testimony on March  
16 11th, do you recall?

17 A I don't remember what all I read.

18 Q You might have read the petition? You  
19 think it is something that you would have read?

20 A I may have read it.

21 Q Does Mr. Von Stamwitz draft all of your  
22 contracts like this?

23 MR. VON STAMWITZ: Which contracts?

24 MR. PERZAN: Like this one, Exhibit 19.

1                   THE WITNESS:  If we employ George to  
2 write them he writes them.

3           Q     (By Mr. Perzan) Do you?

4           A     If we need, yes.  All of them, probably  
5 not.  To some of them, yes.

6           Q     So there was a special need here to write  
7 a contract?

8           A     It we feel there is a need for George to  
9 write a contract then we ask George to do it.

10          Q     Was this contract written specifically  
11 for this Adjusted Standard?

12          A     No.  George doesn't feel that we do  
13 contracts very well, so he chooses to write most of  
14 them.

15          Q     Is this the first one?

16          A     No.

17          Q     There are others that he has written?

18          A     Yes.

19          Q     Can you think of one?

20          A     He has looked over the contracts on land  
21 that we have done.  He has looked over contracts on  
22 buys that we have done.  He has looked over  
23 contracts on agreements when we buy a business.

24          Q     I don't want to get into all the things

1 that Mr. Von Stamwitz does for you. I know he does  
2 a lot of things. I am talking specifically about  
3 the zinc oxide sales or the sales of copper tin  
4 oxide, whichever you call it. I don't really need  
5 to get beyond that.

6 A We have George do our contracts so that  
7 they are correct.

8 Q Was this the first zinc oxide contract he  
9 has done for you?

10 A I don't know the answer to that.

11 Q Can you tell me what the price of the  
12 contract is here?

13 A I am sorry?

14 Q What the price of the material is based  
15 on this contract?

16 A Of?

17 Q Of the material?

18 A The way that we execute this contract is  
19 that we send copper tin oxides to Spain and they  
20 ship red brass --

21 HEARING OFFICER WALLACE: Let me  
22 interrupt, Mr. Hoff. That's not the question. Is  
23 there a price listed in this document was the  
24 question.

1 THE WITNESS: Oh, I am sorry. I  
2 misunderstood. It is \$149.00 per ton.

3 Q (By Mr. Perzan) Is that a price? It says  
4 historic average. It seems to refer to the past.  
5 Is that what Elmet -- let's back up a minute. Who  
6 pays who under this contract?

7 A The controllers balance the books every  
8 so often and adjust from there.

9 Q Does Chemetco send money to Elmet?

10 A Chemetco has sent money to Elmet.

11 Q Does Elmet send money to Chemetco?

12 A I don't know the answer to that.

13 Q Is the amount of money that Chemetco may  
14 send to Elmet calculated based on anything, any  
15 formula that is reflected in this contract?

16 A There is no formula in this contract. Is  
17 that your question?

18 Q Well, I guess that answers it. There is  
19 no method for calculating the price of this  
20 material in this contract, correct?

21 A In this contract here, no.

22 Q Okay. Ordinarily in a contract wouldn't  
23 you expect to see that? Do you often do contracts  
24 that don't have prices in them?

1           A     We do formula contracts, yes, we do.

2           Q     This says confirm the existing  
3 contracts. Does that mean that there are other  
4 documents out there and this is just a confirmation  
5 of those?

6           A     To the best of my knowledge, this is the  
7 contract.

8           Q     Does this document say zinc oxide  
9 anywhere on it?

10          A     No.

11          Q     Do you think it would be a violation of  
12 this contract to send zinc oxides under this  
13 contract instead of sending copper tin oxides?

14          A     No, I do not because it is done by  
15 chemistry.

16          Q     Well, this says copper tin oxides,  
17 doesn't it?

18          A     Yes, it does.

19          Q     And copper tin oxides is not the same  
20 thing as zinc oxide?

21          A     Copper tin oxides has zinc oxide in it.

22          Q     Before or after you mix them together?

23          A     After.

24          Q     Before you mix them together, then,

1     apparently, copper tin oxide does not have zinc  
2     oxide in it?

3             A     Right.

4             Q     So if this contract says that the letter,  
5     whatever it is, says you have contracts to deliver  
6     3,000 tons per month of copper tin oxides, then,  
7     apparently, under this contract you don't have --  
8     this doesn't say anything about zinc oxide and,  
9     therefore, you don't have a contract to send zinc  
10    oxide?

11            MR. VON STAMWITZ:  Objection.  I believe  
12    the witness just said that zinc oxide is in the  
13    blend.

14            Q     (By Mr. Perzan) Does it indicate that on  
15    this document?

16            A     No.

17            Q     This document does not say anything about  
18    a blend, does it?

19            A     Copper tin oxides.

20            Q     It does not say copper tin oxides have  
21    been blended with something?

22            A     No, it does not say that.

23            Q     What is black copper?

24            HEARING OFFICER WALLACE:  I think we went

1 over that the last time.

2 MR. PERZAN: Did we?

3 HEARING OFFICER WALLACE: Yes.

4 MR. PERZAN: Okay.

5 Q (By Mr. Perzan) If there was less zinc  
6 oxide in this mixture, would you get back more  
7 black copper or red brass from Chemetco -- or from  
8 Elmet? Excuse me.

9 A Ask me that again, please.

10 Q If there was less zinc oxide in this  
11 mixture that you sent over there, would you, as a  
12 result, get more black copper or red brass back  
13 from Elmet?

14 A No. The way we -- what we send over is  
15 copper tin oxides. What we get back is a red  
16 brass, okay. Elmet charges their furnace with a  
17 charge. The copper tin oxides are oxides. Red  
18 brass is a metallic. You can't get from copper tin  
19 oxides to red brass.

20 Q Okay. So the black copper or the red  
21 brass, according to you, does not come from the  
22 copper tin oxides?

23 A No.

24 Q But they can extract something out of the

1 copper tin oxide?

2 A Absolutely.

3 Q What do they extract?

4 A Copper, tin, lead, gold, silver.

5 Q Isn't copper a metallic?

6 A It is in an oxide form. You have to  
7 change the chemical.

8 Q So you can get copper out of these  
9 materials that you send there?

10 A If you did copper tin oxides in a furnace  
11 by itself I don't know what you would get.

12 Q But there is some method by which Elmet  
13 can get copper out of these materials?

14 A Their process is a charge. This is one  
15 piece of the charge. The charge is a continuous  
16 charge into a blast furnace.

17 Q Under this contract does it tell you how  
18 much black copper and red brass you are going to  
19 get back from Elmet?

20 A The red brass is a buy from Elmet. The  
21 copper tin oxides and the red brass -- we send the  
22 copper tin oxides and they send the red brass.  
23 Okay. It is two separate issues.

24 Q But the contract --

1           A     The reason we send them copper tin oxides  
2     is because you cannot get oxides in Europe. The  
3     reason we get red brass back is because you cannot  
4     get red brass in the United States.

5           Q     Why are they formulized in this contract  
6     at the same time then?

7           A     Ask that question again, please.

8           Q     Why are they formulized in this contract  
9     at the same time?

10          A     I don't understand the question.

11          Q     Well, if they are separate transactions,  
12     why do you even need to mention the black copper  
13     and red brass in this contract?

14          A     What we need is red brass and what they  
15     need are oxides. It is the overall picture.

16          Q     So this document does not, then, reveal  
17     how much black copper and red brass you are going  
18     to get from Elmet?

19          A     No, there is not a quantity.

20          Q     Okay. So it could be any amount?

21          A     We purchase every month.

22          Q     This contract does not tell you how much  
23     you are going to send to Elmet, how much copper tin  
24     or zinc oxides you are going to send to Elmet below

1 the maximum of 3,000 tons per month, does it?

2 A It says we have a contract to ship 3,000  
3 tons a month of copper tin oxides.

4 Q Does this letter state the specifications  
5 that the copper tin oxides have to meet?

6 A Not on this page, no.

7 Q Does this letter mention evaluation as it  
8 is mentioned in permits?

9 A Does it mention their assay techniques in  
10 Spain, no, it does not.

11 Q Does it mention evaluation, was the  
12 question.

13 A No, it does not.

14 Q Where do you get your copper tin oxides  
15 for sale to Elmet?

16 A All over the United States.

17 Q Do you know what Elmet does with the  
18 waste that it produces?

19 A I don't work at Elmet.

20 Q Can you tell me who signed this for  
21 Elmet?

22 A I can't read it either.

23 Q Okay. Can you tell me who signed this  
24 for Chemetco?

1 A Dennis Meyer.

2 Q Who is he?

3 A He is the area manager of commercial for  
4 Chemetco.

5 HEARING OFFICER WALLACE: Area manager  
6 for what?

7 THE WITNESS: For commercial.

8 Q (By Mr. Perzan) What is his function?

9 A He buys materials for Chemetco.

10 Q And sells, too, as well, apparently?

11 A He trades, yes.

12 MR. PERZAN: I don't have anything  
13 further.

14 HEARING OFFICER WALLACE: Mr. Morgan?

15 MR. MORGAN: Thank you, Mr. Hearing  
16 Officer.

17 CROSS EXAMINATION

18 BY MR. MORGAN:

19 Q With regard to I think it is Exhibit  
20 Number 19, which is what has been described as the  
21 contract between Elmet and Chemetco, is that the  
22 first time this relationship has been memorialized  
23 in a document like that, to your knowledge?

24 A Memorialized? What does --

1 Q Put down in writing?

2 A -- that mean?

3 Q Put down in writing.

4 A To the best of my knowledge, I think  
5 there are other contracts each year.

6 Q This refers to -- is it calendar year  
7 1997?

8 A Yes, I believe so. It is from 01-01-97  
9 through 01-01-98, I believe.

10 Q Have negotiations started on the  
11 01-01-98?

12 A I don't know that.

13 Q Who would be in charge of that?

14 A That would be Dennis.

15 Q Now, in paragraph two of that contract,  
16 it says Chemetco balances account based on the red  
17 brass received. There is a dollar figure, an  
18 estimated dollar figure for the red brass. How is  
19 the balancing dollar figure for the copper tin  
20 oxide determined?

21 A We ship -- as the whole picture, we ship  
22 copper tin oxides. Okay. We have a cost of doing  
23 that, okay, all costs. Then we have a purchase for  
24 red brass, okay. We know all the margins on that.

1 Okay. Then that difference is done and then the  
2 account is settled.

3 Q I am asking how do you determine how to  
4 sell it? How do you determine what the cost is of  
5 the copper tin oxides?

6 A They track it monthly on shipments,  
7 okay. Then the market goes up and down, and then  
8 they will settle after a period of time.

9 Q The market for what?

10 A For copper.

11 Q For copper. So it is based on the copper  
12 content of the copper tin oxides?

13 A Actually, I should say it is based on the  
14 COMEX market or the LME market. I don't know  
15 exactly how the --

16 HEARING OFFICER WALLACE: Would you spell  
17 those for the record, please, the COMEX and there  
18 was another market.

19 THE WITNESS: C-O-M-E-X and L-M-E.

20 Q (By Mr. Morgan) I guess there is a number  
21 on one of those markets that corresponds to  
22 something in the copper tin oxide; is that correct?

23 A I don't understand that question.

24 Q I don't understand how you determine what

1 the value of the zinc oxide is. That's what I am  
2 trying to get at.

3 A Oh, okay. We have a cost of doing the  
4 copper tin oxides. There is freight costs. Okay.  
5 We have, you know, labor costs, okay. So that is  
6 in this. Then we purchase red brass. That is over  
7 here. There is a margin in red brass, okay, the X  
8 margin that is figured in when we buy the  
9 material. Okay. The cost and the margin are  
10 offset. That's how they balance the books.

11 Q So the only cost of the copper tin oxide  
12 is the labor cost and the freight cost?

13 A And there is some material cost there.

14 Q How do you determine the material cost?

15 A The material cost is tracked. I mean, it  
16 is -- there is contracts. Some of it is free and  
17 some of it is not.

18 Q How do you determine what is free and  
19 what is not?

20 A We purchase the copper tin oxides. Some  
21 of them we get free, and some of them we pay a  
22 penny for. Some of them we pay a quarter of a cent  
23 for.

24 Q So your cost of copper tin oxides

1 reflects what you paid for the copper tin oxides on  
2 the market?

3 A Yes.

4 Q And there is no cost associated with the  
5 zinc oxide you mix in with it; is that correct?

6 A I don't know how much that cost is  
7 figured in there. There is a cost to zinc oxide,  
8 that is true. How much of that is in there I don't  
9 know.

10 Q Do you know how that is determined?

11 A What?

12 Q The cost of the zinc oxide?

13 A The cost accounting, by our cost  
14 accounting process.

15 Q Could you explain that cost accounting  
16 process for me?

17 A We have --

18 MR. VON STAMWITZ: If you know.

19 THE WITNESS: We have general areas that  
20 have cost accounting codes, and everything that is  
21 done in that area is charged to that code.

22 Q (By Mr. Morgan) So if you have a laborer  
23 go out there to pick up zinc oxide would that be  
24 the cost?

1           A     No, it is -- yes, that's part of it. I  
2 mean, every cost associated to that product is  
3 costed against that product.

4           Q     Is there a value of the zinc oxide, in  
5 and of itself, that is included in what Elmet is  
6 charged under your arrangement?

7           A     You would have to ask the controller  
8 where he is right now. That's the financial  
9 accounting group. Okay. I don't know where they  
10 are at right now.

11          Q     I take that to mean that the value of the  
12 zinc oxide can fluctuate over time; is that a fair  
13 statement?

14          A     All the materials in this industry  
15 fluctuate every minute of every day.

16          Q     Okay. There has been some discussion  
17 earlier of what was perceived to be a difference in  
18 the amount of material that Elmet would accept from  
19 Chemetco, the 1,500 tons versus the 3,000 tons.  
20 The waste export documents included a 20 million  
21 kilogram amount on it. Do you know if a new  
22 document needs to be issued if that amount would go  
23 up?

24          A     I don't know how they do these

1 documents. I do know we have a contract for 2,000  
2 tons a month for copper tin oxides. That's what we  
3 can ship a month.

4 Q Would you be surprised to learn that  
5 3,000 tons a month of copper tin oxides would be  
6 almost double 20 million kilograms?

7 A I have not done the math. I would have  
8 to check.

9 Q Well, let me just walk you through my  
10 math. We start with the 20 million kilograms, and  
11 there are 2.2 pounds per kilogram, and that would  
12 mean 44 million pounds of copper tin oxides divided  
13 by 2,000 pounds per ton, that leaves 22,000 tons.

14 A So you are saying 22,000 tons is 20  
15 million kilograms? Is that what you are saying?

16 Q Yes.

17 A Okay.

18 Q Do you know if there has been any effort  
19 by Chemetco or Elmet to notify the Spanish  
20 authorities of the difference between 22,000 tons  
21 and 36,000 tons?

22 A I would not know that.

23 Q Do you know who at Chemetco would know  
24 that?

1           A     That would be Dennis Meyer.

2           Q     Do you know if there is any obligation to  
3 report to the Spanish authorities if the  
4 composition of the material being shipped would  
5 change?

6           A     I don't know the answer to that. I don't  
7 know how the government works.

8           Q     Do you know if there is a similar  
9 document required from the shipments of the red  
10 brass from Elmet to Chemetco?

11          A     I am not sure I know which document you  
12 are talking about.

13          Q     The waste export or waste shipment  
14 document that is Exhibit 18?

15          A     Coming out of Spain?

16          Q     Correct.

17          A     I don't know that.

18          Q     Referring to that exhibit, and I don't  
19 have the page numbers. If I may, I will come  
20 around and point you to the right page. I will be  
21 looking at the English translation. It is item  
22 Number 23. I am still not sure of the page  
23 number. I take that back. That's not the right  
24 one. Okay. This would be the 18-4E. Would you

1 read the paragraph that starts, "with respect to"?

2 A "With respect to processing your  
3 application the Department of Environmental Quality  
4 has no objection to authorizing the shipment of the  
5 waste materials indicated in the aforesaid document  
6 provided that the issuing authority has no  
7 objection."

8 Q Do you know who the issuing authority  
9 they are referring to is?

10 A No, I don't.

11 Q Do you know if there has ever been an  
12 objection filed by any governmental agency to this  
13 procedure?

14 A To the best of my knowledge, no.

15 Q Would you -- would the issuing authority  
16 be the U.S. Environmental Protection Agency?

17 MR. VON STAMWITZ: I believe he stated he  
18 doesn't know.

19 MR. MORGAN: I was hoping that would jog  
20 your memory.

21 HEARING OFFICER WALLACE: The next  
22 question.

23 MR. MORGAN: Certainly.

24 Q (By Mr. Morgan) Mr. Hoff, do you know

1 what the percentage of tin is in the copper tin  
2 oxides you obtain to mix with the zinc oxide for  
3 shipment?

4 A The percentage of tin will vary, you  
5 know, every time you ship.

6 Q Do you know if there is a particular  
7 range that it has fallen in?

8 A There is a spec for Elmet.

9 Q Do you recall what that spec is?

10 A I don't, but I know it has never been  
11 rejected from Elmet.

12 Q There was previously submitted as part of  
13 this application a material safety data sheet for  
14 zinc oxide, if you recall, and --

15 MR. VON STAMWITZ: Mr. Hearing Officer, I  
16 have to object again. We are going over old  
17 exhibits that we went over at some length on March  
18 11th. There is nothing new on this issue.

19 MR. MORGAN: If I may, I think there is.  
20 This document portrays the amount of zinc being  
21 shipped to Spain as being in the range of 9  
22 percent. This material safety data sheet projects  
23 the amount of zinc oxide in the zinc oxide as  
24 anywhere from between 34 to 40 percent.

1                   As I understand the process, they take  
2 half zinc oxide, half copper tin oxides to reach  
3 the total amount. If you reduce 40 percent zinc  
4 oxide by half, you end up with more than 9 percent  
5 zinc in the final mixture. I was trying to explore  
6 that discrepancy.

7                   HEARING OFFICER WALLACE: All right. Mr.  
8 Hoff, what is the explanation for the --

9                   THE WITNESS: I am not sure I understand  
10 your question yet.

11                  MR. MORGAN: Certainly.

12                  HEARING OFFICER WALLACE: Mr. Hoff, I  
13 have let you avoid these questions for a while, and  
14 these aren't hard questions. He has given you a  
15 set of numbers that don't match up and he is asking  
16 you to explain why they don't match up.

17                  THE WITNESS: It is in how we mix it.  
18 The variance in the chemistry is in how we mix it  
19 and what is in the mix.

20                  Q     (By Mr. Morgan) So, as I understand it,  
21 then, your zinc oxide can vary from -- let me  
22 rephrase that. Are you saying that you don't take  
23 half copper tin oxide and half zinc oxides to  
24 provide what you are shipping to Elmet?

1                   MR. VON STAMWITZ: I object. This is  
2 just a point of clarification that I think would  
3 move this along. He is referring to a material  
4 safety data sheet. He is not referring to Elmet's  
5 specifications. Elmet's specifications is an  
6 exhibit. It was in the record. It was testified  
7 about. It is not the same as the material safety  
8 data sheets. There is broad ranges in there. I  
9 believe he is confusing the witness regarding what  
10 are Elmet's specifications versus what is in a  
11 different document. I believe that is part of the  
12 confusion here.

13                   MR. MORGAN: Well, if I may?

14                   HEARING OFFICER WALLACE: Mr. Morgan?

15                   MR. MORGAN: What I was getting at was  
16 their documents for which they obtained approval  
17 from Spain says we are providing 9 percent zinc  
18 oxide. I believe the specifications may be  
19 different than that. The base amount of the zinc  
20 oxide, which they previously have testified is  
21 added at a fifty-fifty ratio, wouldn't result in  
22 that amount. I am just trying to make sure that  
23 what they have told Spain they are shipping is, in  
24 fact, what they are shipping.

1 HEARING OFFICER WALLACE: Well, then ask  
2 that question, then, because we are going back over  
3 prior hearing material. Like I mentioned at the  
4 outset of the hearing, this hearing is really  
5 limited to what has been marked as Exhibits 18 and  
6 19.

7 Q (By Mr. Morgan) Perhaps the easiest way  
8 to do that is to ask, do you know what information  
9 was provided to the Spanish authorities in order to  
10 suggest to them that the amount of zinc was only  
11 9.5 percent?

12 A I don't know where they got that  
13 information. From somebody.

14 Q Would it have been someone within  
15 Chemetco?

16 A I don't know who prepared the papers and  
17 who sent them or what they asked for even.

18 Q Do you know if that information is  
19 accurate, based on the information available to you  
20 today?

21 A Information here in this document?

22 Q Yes, in that document.

23 A In Exhibit 18?

24 Q Yes, in Exhibit 18.

1           A     As far as I know it is correct.

2                     MR. MORGAN:  Nothing further.  Thank  
3 you.

4                     HEARING OFFICER WALLACE:  Thank you.

5 Redirect?

6                     MR. VON STAMWITZ:  Yes.

7                                     REDIRECT EXAMINATION

8                                     BY MR. VON STAMWITZ:

9           Q     Mr. Hoff, I am going to hand you what has  
10 been marked as Petitioner's Exhibit 4 from the  
11 previous hearing, and I would like you to read into  
12 the record the range for zinc in that document?

13           A     The range for zinc is 10 to 30 percent.

14           Q     Thank you.  Now, in 1996, when you  
15 prepared a shipment of copper tin oxides to Elmet,  
16 how large was that shipment?

17           A     Each shipment is a 1,500 ton barge.

18           Q     Is that 100 percent of the zinc oxide  
19 produced in that given period of time?

20           A     Yes.  We will ship the barges with copper  
21 tin oxides, ship 100 percent of current production  
22 zinc oxide.

23           Q     In other words, at 1,500 a shipment you  
24 don't have any excess zinc oxide lying around?

1           A     We do not.

2           Q     So you had no need to have an arrangement  
3 with Elmet larger than 1,500?

4           A     That's true.

5           Q     Now, if for some reason operations  
6 changed and in 1996 you had the ability to send  
7 more than 1,500 to Elmet, do you have an opinion  
8 regarding whether Elmet would take 1,500 more -- or  
9 not 1,500 more, but more than 1,500 in 1996?

10          A     Oxides, in their process, it is very  
11 important how they make their product.

12                   HEARING OFFICER WALLACE: All right.

13          What's the answer, Mr. Hoff?

14                   THE WITNESS: Yes.

15          Q     (By Mr. Von Stamwitz) Would Elmet take  
16 more than 1,500 tons in 1996 if you asked them to?

17          A     Yes.

18          Q     I am going to hand you an affidavit of  
19 Mr. Bovida (spelled phonetically). I refer you to  
20 paragraph two. I ask you to read into the record  
21 what Mr. Bovida stated the capacity of the contract  
22 was?

23          A     Elmet has an open contract with Chemetco,  
24 Incorporated of Hartford, Illinois, either to

1 purchase or tow into black copper up to 3,000  
2 metric tons per month of nonferrous copper tin zinc  
3 metallic oxides.

4 Q Thank you. Since the last hearing, since  
5 the hearing on March 11th, have you been making  
6 regular shipments to Elmet?

7 A Yes.

8 Q Since the last hearing have you been  
9 continuing to investigate other additional --

10 MR. PERZAN: Objection. It is beyond the  
11 scope of this hearing.

12 HEARING OFFICER WALLACE: Sustained.

13 MR. VON STAMWITZ: No further questions.

14 HEARING OFFICER WALLACE: All right.

15 Recross?

16 MR. PERZAN: I have nothing further.

17 MR. MORGAN: Nothing further. Thank  
18 you.

19 HEARING OFFICER WALLACE: All right.

20 MR. VON STAMWITZ: I believe I have not  
21 yet moved for the entry into the record of Exhibits  
22 18 and 19. I would like to do that at this time.

23 HEARING OFFICER WALLACE: All right. Mr.  
24 Perzan?

1                   MR. PERZAN: We have no objection to 18.  
2 Exhibit 19 we object to on the basis of hearsay and  
3 lack of foundation.

4                   HEARING OFFICER WALLACE: All right.  
5 Petitioner's Exhibit Number 18 is admitted. I will  
6 admit Petitioner's Exhibit 19. I believe under the  
7 rules of the Board it probably is an acceptable  
8 exhibit.

9   (Whereupon said documents were  
10 admitted into the record as  
11 Petitioner's Exhibits 18 and 19  
12 as of this date.)

13   EXAMINATION

14   BY HEARING OFFICER WALLACE:

15           Q     Mr. Hoff, I know you mentioned earlier in  
16 your previous testimony, but what is your position  
17 with Chemetco?

18           A     President.

19           Q     And this Dennis Meyer, where does he work  
20 out of?

21           A     Phoenix, Arizona.

22           Q     And you work out of?

23           A     Hartford.

24           Q     Hartford, Illinois?

1           A     Yes.

2           Q     Does Chemetco have several facilities or  
3 several locations?

4           A     Chemetco is one manufacturing facility,  
5 but we have many warehouses that collect.

6           Q     What do your overall responsibilities  
7 include, Mr. Hoff?

8           A     Operations of Chemetco, and transform  
9 into basically the operating side of the business.

10          Q     Now, do you directly supervise Mr. Dennis  
11 Meyer?

12          A     No, I do not.

13          Q     Now, is he actually in Chemetco, Inc. or  
14 is he in another --

15          A     He is a Chemetco employee.

16          Q     A Chemetco employee. Okay. Looking at  
17 Exhibit 18, can you testify here today that the  
18 copper tin oxides that you shipped to Elmet conform  
19 to the percentage numbers that are contained in  
20 line 13?

21          A     Every shipment will be very close to  
22 this. Elmet has a spec that we have to meet.

23          Q     All right. But what about the Spanish  
24 Government? Do you --

1           A     I don't know what, you know, Elmet gave  
2 to the Spanish Government, so I --

3           Q     Well, Mr. Hoff, it is apparent that  
4 Chemetco has submitted document Petitioner's  
5 Exhibit 18 to the Spanish Government since it is  
6 signed by Dennis Meyer.

7           A     Uh-huh.

8           Q     Based upon line 13, there are percentage  
9 points for various materials.

10          A     Uh-huh.

11          Q     Now, do you have any knowledge that, a,  
12 Chemetco has to comply with those numbers, and, b,  
13 does Chemetco comply with those numbers in its  
14 shipment?

15          A     A, this is probably the average that  
16 Dennis gave them out of our computer screen. And,  
17 b, yes, we are very close every time we ship.

18          Q     Do you do -- is it called an assay, is  
19 that --

20          A     Analysis.

21          Q     Analysis.

22          A     Of the material, yes, we do.

23          Q     Of every --

24          A     And so does Spain.

1 Q I am sorry. Let me finish. You do an  
2 analysis of every barge shipment you ship?

3 A We do a random sampling.

4 Q Your random sampling is from different  
5 parts of the barge or different parts of the  
6 shipment or what?

7 A Different parts of the barge.

8 Q And do you maintain records on those?

9 A Yes.

10 Q Now, Mr. Morgan asked you some questions  
11 and you replied with COMEX and --

12 A COMEX and LME.

13 Q LME. Now, are those markets for  
14 products?

15 A Yes, COMEX is the American market. LME  
16 is the European market.

17 Q These are listed exchanges of some type?

18 A Yes.

19 Q So the market does provide a price for  
20 certain commodities?

21 A Yes.

22 Q Does it actually provide -- do the  
23 markets provide a price for copper oxide, copper  
24 tin oxide, as that type of commodity?

1           A     No, they will give you copper, aluminum,  
2 nickel.

3           Q     All right. So these markets do not  
4 provide an oxide price?

5           A     No.

6                   HEARING OFFICER WALLACE: Okay. Thank  
7 you, Mr. Hoff.

8                   Again, Exhibits 18 and 19 are admitted.  
9 Is there anything further, Mr. Von Stamwitz?

10                   MR. VON STAMWITZ: No, sir.

11                   HEARING OFFICER WALLACE: Mr. Perzan?

12                   MR. PERZAN: No, sir.

13                   HEARING OFFICER WALLACE: Everything has  
14 been briefed. Does anyone wish to file a short  
15 supplemental on today's hearing with the Board?

16                   MR. VON STAMWITZ: The Petitioner does  
17 not, but reserves the right if Respondent wants to  
18 file a reply.

19                   MR. PERZAN: I don't think we need to.

20                   HEARING OFFICER WALLACE: All right. We  
21 will leave it that the parties do not intend to  
22 file any post hearing briefs or supplemental briefs  
23 to this hearing. In the event -- I don't encourage  
24 it, but in the event that either party changes its

1 mind you would have to request leave from the Board  
2 to file an additional supplemental brief, and you  
3 would address that to the Board and not to me.  
4 Otherwise, I consider the hearing concluded as  
5 directed by the Board.

6 All right. Thank you very much.

7 Pursuant to the Board's rules, I do not find any  
8 credibility problem with the testimony of Mr.  
9 Hoff.

10 (Exhibits were retained by  
11 Hearing Officer Wallace.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public  
5 in and for the County of Montgomery, State of  
6 Illinois, DO HEREBY CERTIFY that the foregoing 66  
7 pages comprise a true, complete and correct  
8 transcript of the proceedings held on the 26th of  
9 August A.D., 1997, at the State Regional Office  
10 Building, Collinsville, Illinois, in the matter of:  
11 Petition of Chemetco, Inc. for an Adjusted Standard  
12 from 35 Ill. Adm. Code 720.131 (a) and (c), in  
13 proceedings held before the Honorable Michael L.  
14 Wallace, Hearing Officer, and recorded in machine  
15 shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my  
17 hand and affixed my Notarial Seal this 3rd day of  
18 September A.D., 1997.

19

20

21 Notary Public and  
22 Certified Shorthand Reporter and  
Registered Professional Reporter

23 CSR License No. 084-003677  
My Commission Expires: 03-02-99

24