

MOCK TRIAL

Plating Facility

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PARTICIPANTS

❖ Honorable Amanda Reeve

❖ Justin Bauer – ADEQ Inspector

❖ Mitch Klein – Arizona Attorney General

❖ Marty Minter – Plating Shop Owner

❖ Michael Ford – Defense Attorney



SETTING THE STAGE

- ❖ ADEQ Inspected a Phoenix Plating Facility
- ❖ Several NOVs (Notice of Violations) issued
 - ❖ Settlement failed as to 1 NOV
- ❖ ADEQ then filed suit against the plating facility




TRIAL

Opening Statements

❖ *Mitch Klein: Arizona Attorney General*

❖ *Michael Ford: Defense Attorney*



DIRECT EXAMINATION BY PLAINTIFF

- ❖ Establish ADEQ inspected the facility
 - ❖ Observed alleged hazardous waste
 - ❖ Believes owner failed to characterize

DOCUMENT OFFERED

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Papago Plating Company Inc as the owner/operator of Papago Plating Co has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on January 29, 2014.

I. LEGAL AUTHORITY and NATURE OF ALLEGED SIGNIFICANT VIOLATION(S)

1. 40 CFR § 262.11 / A.A.C. R18-8-262

Failure to perform hazardous waste determination

ADEQ Compliance Officers requested a waste profile for the black-colored dust in the Repair/Grinding/Polishing Rooms called "floor sweep." In 2006, * [Owner] told ADEQ that the dust could possibly contain chromium due to the nature of the products used at the facility. [Owner] provided a 2002 non-hazardous waste profile for the black-colored dust based on analytical results testing for TCLP from a different facility, dated May 5, 1995. During the January 29, 2014 inspection, [Owner] stated that the facility has not changed any of the grinding/polishing material. He stated that the facility disposed the black-colored dust as solid waste based on this non-hazardous waste profile from [a different facility]. ADEQ believes that the waste profile is insufficient in providing an accurate waste determination. [Owner] failed to provide adequate waste determination records for the black-colored dust in the Repair/Grinding/Polishing Rooms called "floor sweep."

ADEQ Compliance Officers requested a waste profile for the rinse water collected and stored in the Plating Area used and evaporated in the Paint Strip Tank. Papago also failed to provide waste determination records for the rinse water collected and stored in the Plating Area used and evaporated in the Paint Strip Tank.

PHOTO 1 OFFERED



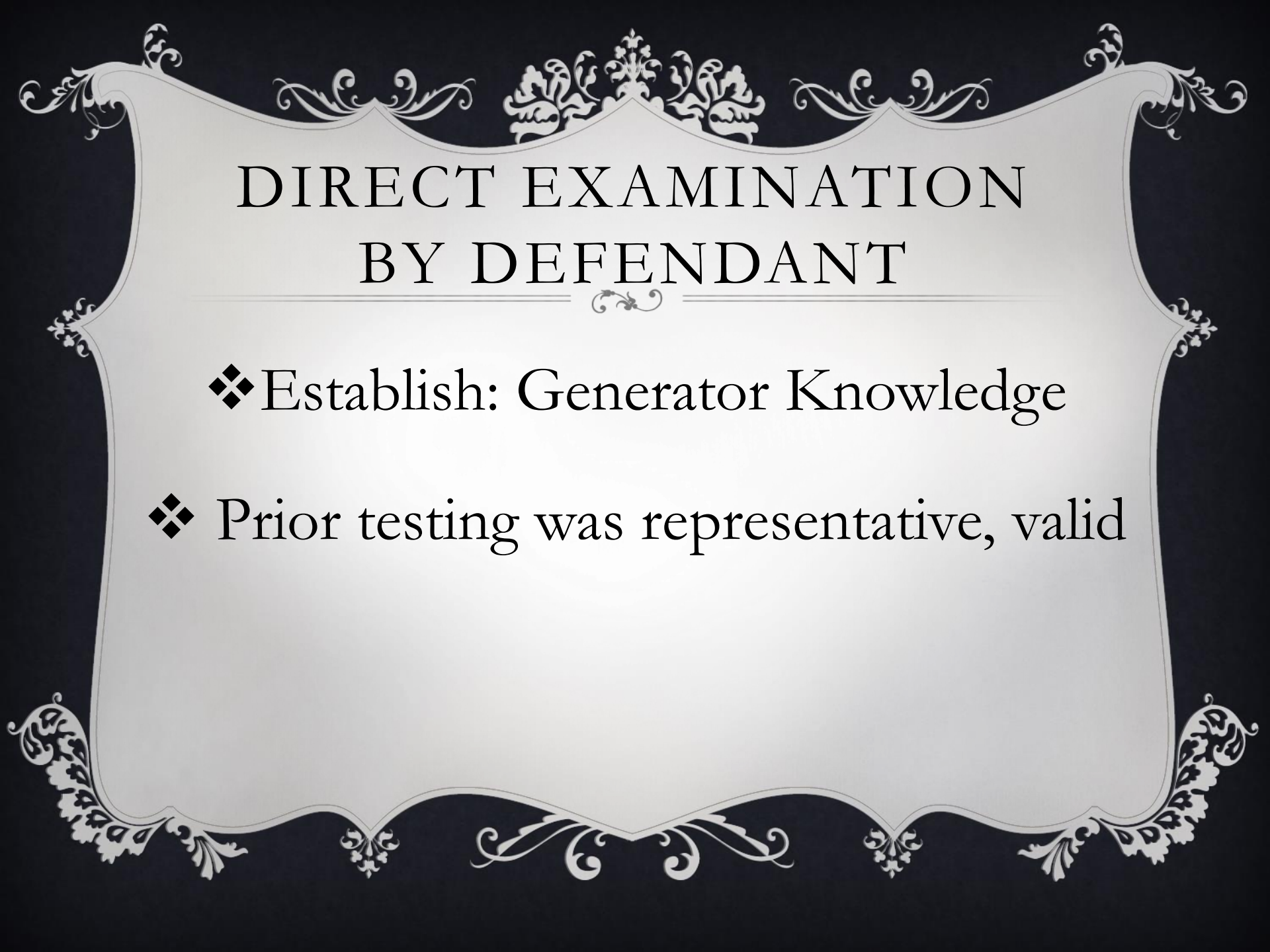
PHOTO 2 OFFERED





CROSS EXAMINATION BY DEFENDANT

- ❖ ADEQ did not test the waste
- ❖ Generator knowledge can be basis of characterization
 - ❖ Characterizations can be based on prior testing
 - ❖ Characterization just needs to be representative
 - ❖ ADEQ has no rule or guidance on testing age



DIRECT EXAMINATION BY DEFENDANT

- ❖ Establish: Generator Knowledge
- ❖ Prior testing was representative, valid

EVIDENCE OFFERED

GM 22 Waste Characteristics						
<u>A. Description of hazardous waste</u> METAL HYDROXIDE SLUDGE						
<u>B. EPA Hazardous Waste Code(s)</u> 2002, 2004 Non-haz						
<u>C. State Hazardous Waste Code(s)</u>						
<u>D. Source Code</u> G23	<u>Management Method Code</u>	<u>E. Form Code</u> W505	<u>F. Waste Minimization Code</u> B	<u>G. Quantity</u> 6640.0	<u>UOM</u> POUNDS	<u>Density</u>
On-site Generation and Management of Hazardous Waste						
Off-site Shipment of Hazardous Waste						
<u>Site 1</u>	<u>B. EPA ID of facility to which waste was shipped</u> AZD980735500		<u>C. Management Method Code</u> H010	<u>D. Total Quantity Shipped</u> 6640.0		
<u>Comments</u>	2009 test data					



CROSS EXAMINATION BY PLAINTIFF

- ❖ Establish facility process changed
- ❖ Prior testing unrepresentative, invalid
- ❖ Generator had no knowledge, failed to
characterize



QUESTIONS FROM THE JURY

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CLOSING ARGUMENTS

❖ Mitch Klein: *Arizona Attorney General*

❖ Michael Ford: *Defense Attorney*