
BETWIXT & BETWEEN BEARINGS NEGOTIATION (A)

Confidential Information for the DEC Representative

You are a senior official of the DEC, charged with enforcing environmental compliance by companies doing business in New York state. The DEC is under some political pressure to exact high fines for violation of environmental laws, as deterrence to others. Of course, the business community exerts pressure in the opposite direction, asserting that overzealous environmental regulators and burdensome fines will make New York inhospitable for business.

Best Bearings, Ltd. is a large, publicly traded British corporation, with locations in the U.S., Australia, and Thailand, with annual profits usually in the \$50 million range. However, publicly filed financial reports indicate that its corporate profits are down overall this year, with a particularly sharp downturn in the New York location. You don't know Best Bearings' projected earnings for this year. Shareholders are largely U.S., British, or Australian citizens.

You strongly believe that Best Bearings' fine should be significant. Although its new chief engineer appears to have reported the company's non-compliance immediately, that was his legal obligation. Best Bearings had been violating environmental laws for at least five years under the former chief engineer and must be held responsible. In the past, DEC has obtained fines from \$50,000 to \$2 million for similar violations, depending upon the size of the corporation and whether the case went to a hearing or was negotiated. If you don't reach an agreement with Best Bearings, the matter will go to a regulatory hearing board to determine the fine and the fix. You want to avoid going to the board, which has some new members who may be sympathetic to Best Bearings in the current difficult business environment. You are concerned that they may impose a low fine – perhaps lower than \$50,000 - because Best Bearings came forward. Such a precedent will damage your ability to negotiate with other corporate violators.

Obviously, you would like to negotiate for a very high fine. If possible, you would like Best Bearings to agree to five years of audits by an environmental consulting firm, to ensure that all standards are met. You do have some flexibility, as long as DEC can be confident that a top-notch monitoring and reporting system is in place and Best Bearings remains in full compliance. Finally, you want to be certain that DEC will clean up the site of its previous waste disposal. Based upon your staff scientist's report, you would prefer that Best Bearings commit to excavating the waste and arrange for shipment to an inland site, with a prepared sealed bottom, far from any groundwater sources. Because it requires excavation and hauling, the fix would admittedly be costly. You anticipate that Best Bearing will ask permission to undertake a less expensive fix. You may be open to some compromise, assuming that your scientists are satisfied that the approach is sound, and that Best Bearing

will guarantee its effectiveness. On the other hand, you are not sympathetic to the complaint that Best Bearing may have to pay a little bit more.

Negotiate with Best Bearings' U.S. President to arrive at the amount of an agreed-upon fine, the type of fix for the current waste site, and a rigorous environmental auditing and reporting process for the next five years.