
**BETWIXT & BETWEEN BEARINGS
NEGOTIATION
(B)**

Confidential Information for President of Best Bearings

Best Bearings, Inc. is a large, publicly traded British corporation with annual profits usually in the \$50 million range. Over the past year, overall corporate profits have been lower, with a particularly sharp downturn in orders and profitability in the New York location, which is your responsibility. Best Bearings U.S.A. is now slated to earn no more than \$5 million in profits this year. Shareholders are largely U.S., British, and Australian citizens.

You strongly believe Best Bearings should only pay a token fine. After all, your new chief engineer immediately reported the non-compliance to the General Counsel, who immediately reported it to the DEC. A fine is a punishment. It doesn't make sense to punish a good corporate citizen who reported its own violation and has worked diligently to correct the problem. In the past, DEC has obtained fines from \$50,000 to \$2 million for similar violations, depending upon whether the case went to a hearing or was negotiated, and depending upon the size of the corporation. If you don't reach an agreement with the DEC, this will go to a regulatory hearing. You want to avoid a hearing because you fear political pressures will lead to an extremely high fine - perhaps more than \$2 million.

Obviously, you would like to negotiate for as low a fine as possible. However, you would be less resistant on every dollar of the fine if the DEC would allow Best Bearings to do self-auditing and reporting, instead of paying for an external audit, and if the DEC would accept your expert's recommended method for cleaning up the site of previous waste disposal.

The President of Best Bearings' Australian subsidiary recently faced a similar problem and told you that external environmental audits are extremely expensive and intrusive. An "external expert firm" charges top dollar and likes to work on its schedule, which inevitably disrupts your operations. In Australia, Best Bearings AUS paid \$250,000 per year in fees to an environmental consulting firm. Assuming similar fees, that external audit would cost \$1.25 million over five years. To perform an internal audit, using paid staff (even if you hire someone) will cost only \$50,000 per year or \$250,000. You are also concerned that external audits can lead to breaches in the confidentiality of your manufacturing processes.

Regarding clean-up, your engineers recommend capping and sealing the waste site, using the latest technologies, at an estimated cost of \$200,000. DEC's preferred fix would require excavating the waste and shipping it to an inland site, with a prepared sealed bottom, far from groundwater sources. Your engineers estimate the cost of the DEC fix at \$500,000.

If helpful, you may convey any of these cost figures or business concerns to the DEC.

Negotiate with the DEC representative to arrive at the amount of an agreed-upon fine, the type of fix for the current waste site, and whether the DEC will insist upon an external audit vs. internally generated (but certified) environmental audits for the next five years.