

Alternative Dispute Resolution Success Story

NIBCO Administrative Hearing Avoided Using Mediation

Mediation of negotiations between the U.S. Environmental Protection Agency (EPA) and NIBCO, Inc. resulted in a \$750,000 settlement, the largest penalty ever obtained by EPA under the Resource Conservation and Recovery Act (RCRA) when the settlement occurred in the spring of 1996. The settlement ended a dispute that had stretched over two years and had seemed only days before the settlement to be headed for an administrative hearing and possible litigation.

NIBCO, the world's largest manufacturer of brass valves, manufactures its products by pouring molten brass into sand molds. The sand used in the molds becomes contaminated with both lead and cadmium from the brass. NIBCO had been treating the sand from its Nacogdoches, Texas facility by adding iron filings to it, then disposing of the sand in a municipal landfill. EPA, applying its standard toxicity characteristic leaching procedure, determined that the sand was a hazardous waste. Moreover, EPA concluded that NIBCO was violating RCRA regulations by treating the sand without a permit. NIBCO disagreed, maintaining that the sand was treated as part of the manufacturing process (and thus not as a waste) and that the treated sand was not a hazardous waste.

EPA filed an administrative enforcement action under authority of RCRA, seeking injunctive relief and a \$2.2 million penalty from NIBCO. Both sides prepared to present their cases before an administrative law judge. As the hearing date neared, it became clear that NIBCO was willing to change its treatment and disposal practices, but the parties were not even close to agreeing on a penalty amount. Hoping to settle without the expense and uncertainty of a hearing, NIBCO proposed that the parties enter into mediation. EPA was receptive to the idea, especially as there were no contentious compliance issues outstanding, and the parties readily agreed on Howard Seitzman as a mediator. The parties scheduled a one-day mediation session in which they hoped to resolve the case.

Mediation Progresses from Frustration to Compromise

NIBCO and EPA's representatives spent the entire day with Mr. Seitzman without any apparent progress. EPA's attempts at compromise led to little or no movement on the part of NIBCO. At the end of the day, the parties went home empty-handed. The mediation appeared to have been fruitless. A day or two later, however, NIBCO called Mr. Seitzman and asked him to broker an agreement by relaying a settlement offer to EPA and seeking a response. There ensued several days of exchanges, through Mr. Seitzman, which ultimately led to agreement on a penalty amount of \$750,000, to be paid over four years. In addition to the penalty, NIBCO agreed to remove sand it had disposed of at the municipal landfill and to install wells to monitor the groundwater at the landfill. An additional benefit growing out of the NIBCO settlement is that NIBCO was able to arrange to send its waste sand to a copper smelting facility, where it is now used as a fluxing agent in the copper manufacturing process rather than being disposed of in a landfill. The early NIBCO settlement bore further fruit when the Sloan Valve Company, which had been engaged in a dispute with EPA nearly identical to NIBCO's, agreed to settle and pay a penalty in the wake of the NIBCO settlement.

ADR SUCCESS PROFILE NIBCO, Inc.

Site Description:

NIBCO, Inc.'s brass valve manufacturing facility in Nacogdoches, Texas and a local municipal landfill

Disputed Issue:

The penalty amount to be paid by NIBCO for violating Resource Conservation and Recovery Act regulations by disposing of waste sand containing lead and cadmium in a municipal landfill

Alternative Dispute Resolution Tool Used:

Mediation of negotiations about the penalty amount NIBCO would pay

ADR Participants:

NIBCO, Inc.

U.S. Environmental Protection Agency

EPA Region: 6

State: Texas