

MEMO

TO: Mayor Merkes
Common Council

FROM: Jeff Brandt



RE: Fox River PCB Cleanup

I want to provide you a report on the Fox River PCB cleanup. I am happy to report that much of this is good news.

For several years, Menasha, Neenah and NMSC have been trying to get various insurers to provide coverage for this matter. Included would be defense costs. Insurance law in the State of Wisconsin has not been clear and has sometimes been unfavorable to the Cities. We now have an agreement that various insurers will be providing a legal defense under a reservation of rights. A reservation of rights means that the insurers disagree that they are obligated under the policy, but until that is ultimately resolved, they will pay for our defense. The payments will date back to the filing date of the pending lawsuit, June 8, 2008. The reimbursement is expected to be approximately \$1,250,000 leaving about \$300,000 for bills incurred prior to June 8, 2008. We will continue to pursue those as well.

Payment will be made to the Davis Kuelthau trust account. Bills which have not been paid will be offset by Davis Kuelthau upon approval by NMSC. Money left over will be forwarded to NMSC. They will then offset any bills they have paid to Davis & Kuelthau which have not been reimbursed by the two cities. I understand there are a number of bills waiting for Mayor Merkes authorization. After that offset, Menasha's remaining money will be sent to the City. In a recent conversation with Mayor Merkes, he told me that he and Comptroller Stoffel will be bringing a recommendation on the sewer rate to the Council during the budget process. This payment is GREAT news, especially since Phase 1 of the trial will be starting on December 1, 2009 in Federal District court.

The liaison group which has not been formally meeting since the withdrawal from it of Green Bay Met and De Pere has been put on standby status. It was decided to remain a group than to formally disband so as to preserve the confidentially agreement of the various members. There is money that had previously been forwarded to Davis & Kuelthau to be held in trust towards liaison group fees. After balancing any unpaid invoices, Menasha should get about \$35,000 returned from this pre-payment.

As you know, Menasha, Neenah and Appleton have been coordinating much of the defense strategy for Phase 1 as well as sharing depositions. This has saved significant money. To that end, we submitted a proposed global settlement agreement to the State and Federal agencies. It is the desired result that we reach such an agreement so as to provide contribution protection to the municipalities. It is not expected the agency response will be coming soon. Much of the attention of everyone is focused on the December 1, 2009 Federal Court trial date. The agencies have tried to position themselves to avoid participation in the trial. I expect they will need to be reluctant participants.

If anyone has any questions regarding this matter, please contact Mayor Merkes to authorize my appearance at the Council meeting to answer those questions. I'd rather have the opportunity to provide answers to the entire Common Council than to do it individually.

9/17/09