NEENAH-MENASHA SEWERAGE COMMISSION

Regular Meeting

Tuesday July 24, 2012

Meeting was called to order by Commission President Youngquist at 8:00 a.m.

Present: Commissioners Tim Hamblin, Gordon Falck, Raymond Zielinski, Kathy Bauer, Mike Sambs, Dale Youngquist; Manager Randall Much, Attorney John Thiel, Accountant Roger Voigt.

Excused: Commissioner Jim Gunz.

Also Present: Tom Kispert, Chad Olsen, Amy Vaclavik, Nick Vande Hey (McMAHON); Paul Much, Rob Franck (MCO).

Commissioners discussed the minutes from the Regular Meeting and Closed Session of June 26, 2012, from the Special Meeting and Closed Session of July 6, 2012, and from the Special Meeting and Closed Session of July 16, 2012. Commissioner Falck indicated there is an incorrect spelling in the July 6, 2012 closed session meeting minutes for Glatfelter. After discussion, motion made by Commissioner Zielinski, seconded by Commissioner Bauer to approve the minutes of the Regular Meeting and Closed Session of May 22, 2012, the Special Meeting of July 6, 2012, the Special Meeting Closed Session of July 6, 2012 as corrected, and for the Special Meeting and Closed Session of July 16, 2012. Motion carried unanimously.

Correspondence

The following correspondence was discussed:

A. June 28, 2012 letter to William Zelinski, President NMSC from Meja Maka, DNR.
RE: Clean Water Fund Program Financial Assistance Application-Biosolids Building.

B. June 29, 2012 letters to NMSC municipalities from Amy Vaclavik, McMahon.
RE: Variance Request for Clean Water Fund Loan.

Amy Vaclavik reported the State has approved the letters submitted by the City of Neenah and the Town of Menasha.

C. July 9, 2012 letter to Dale Youngquist, President NMSC from Heidi Schmitt Marquez, DNR.
RE: Application for Reissuance of NMSC WPDES Permit Number WI0026085-08-0.

Manager Much reported the effluent temperature needs to be monitored for one year as part of the renewal process. This monitoring has begun.

Old Business

Biosolids. Chad Olsen reported there is no information to be discussed at this time in open session.

New Business

Budget, Finance, Personnel

Accountant Voigt presented the financial statements for the month of June 2012. The operating income for the year is sufficient and the rates should remain the same through the 3rd quarter. President Youngquist questioned the deferred debits and receivables; the deferred debits relate to attorney bills for the Fox River and the negative receivable is due to the year end 2011 adjustment for operations. After discussion, motion made by Commissioner Zielinski, seconded by Commissioner Bauer to approve the Financial Statements for the month of June. Motion carried unanimously.

For discussion purposes, Accountant Voigt requested input from the Commissioners for budget items for the 2013 budget. Commissioner Zielinski questioned if the Commission should consider looking at holding meeting twice per month. Accountant Voigt was instructed to put this item on the August meeting agenda.

Accountant Voigt presented the Accountant's Report and Cash Flow Projection for the month of June. The interest rates have not changed; MCO generated $5,100 in income to the Commission in June. Accountant Voigt reported on changes to the cash flow projection and the projected cash shortage in December. After discussion, motion made by Commissioner Zielinski, seconded by Commissioner Hamblin to accept the Accountant's Report and cash flow projection for June. Motion carried unanimously.

Motion made by Commissioner Falck, seconded by Commissioner Zielinski to approve operating and payroll fund vouchers #133039 through #133101 in the amount of $494,318.81 for the month of June 2012 and Construction Fund Vouchers #131 through #132 in the amount of $17,078.091 for the month of June 2012. Motion carried unanimously.

Accountant Voigt presented MCO Invoices #16586, #16621 and #16620 in the amounts of $118,845.45, $325.60 and $410.27. After discussion, motion made by Commissioner Zielinski, seconded by Commissioner Bauer to approve for payment MCO Invoices #16586, #16621 and #16620 and to pay the invoices after August 1, 2012. Motion carried unanimously.

Accountant Voigt presented for payment McMAHON invoices #50006 - $14,470.00; #50007 - $48,650.00; #50005 - $1,519.00; #49788 - $5,971.92; and #40007 - $712.45. After discussion, motion made by Commissioner Hamblin seconded by Commissioner Zielinski to approve for payment invoices #50006, #50007, #50005, #49788 and #40007. Motion carried unanimously.

Neenah Mayor Scherck and Attorney Godlewski entered the meeting.

Attorney Thiel discussed the recap of 3 sets of unpaid bills with Davis & Kuelthau (Attorney Pam Captain entered the meeting). The unpaid bills are for: NRDA (Whiting case) – the insurance carriers are no longer paying towards these costs, United States (cleanup issue) – insurance

companies are paying except for disputed costs, and insurance matters (arbitration). Davis & Kuelthau have also requested the NMSC to be the first payer of bills for their services and not the insurance companies; the Commission would then seek payment from the insurance companies for reimbursement. Attorney Thiel indicated this is risk shifting – shift the risk of getting reimbursed to the Commission. After discussion, motion by Commissioner Bauer, seconded by Commissioner Sambs that the NMSC does not agree to be the first payer on bills from Davis & Kuelthau. Additional discussion followed: Commissioner Zelinski questioned if the Commission does not pay, who would – it would be the insurance carriers. Attorney Godlewski questioned what effect the arbitration case has on the issue – this will be discussed further in closed session. After discussions, motion carried unanimously. The insurance matters is an older bill with charges relating to the arbitration hearing; Tara Mathison (Davis & Kuelthau) provided Attorney Thiel a good explanation of the charges and the substantial discount provided on this service. About $40,000 of the $79,000 invoice is for the arbitration case, the balance of the invoice is for other insurance matters. Attorney Thiel recommends a motion to pay this invoice. Commissioner Bauer questioned being able to receive the detail on these invoice for review – these bills are currently reviewed by Attorneys Thiel, Godlewski, and Captain. This was further discussed, after discussion motion by Commissioner Sambs, seconded by Commissioner Bauer to approve for payment matter #01428.0248 subject to Attorney Thiel seeking further credits. Motion carried unanimously. Attorney Thiel discussed the $24,000 balance remaining on charges after the insurance company review of the invoices. After discussion, motion by Commissioner Bauer, seconded by Commissioner Falck to approve for payment the outstanding balance in matter 01408.0300 subject to Attorney Thiel seeking further credits. Motion carried unanimously. Attorney Thiel indicated no action should be taken on the remaining bills from Davis & Kuelthau – he would need to look at these bills closer before authorizing any payment. President Youngquist reminded the Commissioners the cities of Neenah and Menasha have been paying these bills and we want to make sure they are kept in the loop. Mayor Scherck questioned why this is the practice if the Commission is not fully involved. President Youngquist responded the other communities were not involved in the Commission when this occurred. Attorney Thiel added there has been no legal opinion on this and how it is being handled.

Tom Kispert discussed Certificate for Payment #1 for Contract G – Grit Removal from Energenecs, Inc. and Certificate for Payment #1 for Contract K – Digester Mixer from Energenecs, Inc. The shop drawings are approved and the 5 percent payment for Contracts G and K can be approved. After discussion, motion made by Commissioner Bauer, seconded by Commissioner Sambs to approve for payment Certificate for Payment #1 for Contract G to Energenecs, Inc. in the amount of $7,329.00 and Certificate for Payment #1 for Contract K to Energenecs, Inc. in the amount of $11,110.00. Motion carried unanimously.

Operations, Engineering, Planning

Manager Much reported the facility is operating well. The plant experienced an effluent violation for mercury; an analogy was provided as to what constitutes a nanogram per liter (ng/l) – one drop of detergent in a string of railroad tank cars ten miles long; the NMSC effluent limit for mercury is 6 ng/l. Commissioner Bauer questioned where is the mercury coming from. Manager Much responded we have been testing industries and the collection system and we have not found any hot spots is the system. Commissioner Zielinski questioned if it is true in saying it is always from dental. This is the greatest potential for the source. Manager Much reported a sodium hypochlorite tank is failing; a contractor is scheduled to come in today to make temporary

repairs, new tanks are in the plans for the current rebuild. Commissioner Falck questioned the repair costs. Rob Franck responded it is estimated at a couple thousand dollars; further detail was provided on how the tank will be repaired. Manager Much reported on the methane engine; the unit when running provides significant income, we have been informed the methane gas cleaning equipment located in the blower building is not up to current code. Tom Kispert referenced the memo in the packet on this subject. There are four options listed in the memo, a fifth option would be to take out the gas cleaning equipment and install in a new building. Tom further explained the options on how to proceed; based on code compliance, he recommends taking the system offline. President Youngquist questioned how long can we take before we take the unit offline, we have been running this unit for years under the same circumstance. Commissioner Sambs questioned if there is the danger of explosion. There is that chance, but it is no longer code compliant and we cannot be grandfathered to allow. Manager Much questioned if we could bypass the building and run the gas straight to the engine. This is not an option with the current piping. President Youngquist indicated this is a safety issue; we should have a motion on how to proceed. Motion made by Commissioner Falck, seconded by Commissioner Hamblin to shut down the methane engine and take it offline for safety reasons per the memo from McMahon. Motion carried unanimously. Commissioners further discussed how to salvage the unit. After discussion, motion by Commissioner Falck, seconded by Commissioner Hamblin to accept the Operating Report for June. Motion carried unanimously.

Nick Vande Hey discussed who the Fox-Wolf Watershed Alliance is. Nick further reported there was a delay in providing the agreement for services due to the attorney review of the agreement and in getting the agreement finalized. We are now going around to the communities for discussions. Green Bay Met has estimated it would cost them $125-$200 million to build a facility just for treating phosphorus. Storm water systems are also affected by the TMDL; this will have an impact on all communities in the area. By working together with the other facilities it will provide benefit to all if adaptive management and water quality trading would be the method used for phosphorus reduction. The Fox-Wolf Watershed Alliance will contract with McMahon as the engineer; Tom Kispert, Chad Olsen, Nick Vande Hey would be involved. Commissioner Sambs questioned where would all the money come from. This agreement would consist of a $10,000 fee to each signer as well as a grant that would be received. President Youngquist stated this was presented a couple months ago initially by McMahon; the NMSC has the same thoughts as Grand-Chute Menasha West – this is a good idea but we don't want to be the first. It was reported that Appleton has taken steps for joining. Manager Much indicated with the new discharge permit, this may be a tool we will be required to use. Commissioner Bauer questioned where we are in the process based on the gantt chart. The process has not started. President Youngquist indicated he feels we should join the group before spending any more money on phosphorus studies. Commissioner Falck questioned if we need a proposal for estimated construction project costs; Chad Olsen will bring a proposal to perform the analysis of estimated construction costs to meets limits to the next meeting. Attorney Thiel questioned where are the phosphorus limit numbers coming from; the EPA has had this in the works for many years. After discussions motion by Commissioner Falck, seconded by Commissioner Hamblin to approve entering into the agreement for services with Fox-Wolf Watershed Alliance. Motion carried unanimously.

Tom Kispert reported on the EPA air permit. This permit is regarding the genset unit; Tom doesn't have the proposal completed for the assistance in preparing the permit application, he will have it at the next Commission meeting.

Tom Kispert explained the purpose of the Construction of Wastewater Treatment Modification agreement for services. The previous agreement with McMahon was to get the plans and specs ready and to submit; this will occur on July 31 or August 1. The next steps in the process are to advertise for bids, have a walk thru with prospective bidders (August 30), hold a bid opening (September 13), and award the contract (September 18). There are concerns if this agreement isn't approved; Tom indicated this agreement includes bidding phase services, he would take a leap of faith and perform the services to proceed with the bidding prior to having a signed agreement. The construction schedule is predicted to take 15-months; Tom still needs to confirm if the 15-month schedule is reasonable during the walk-thru. He may receive some pushback from the contractors that they would need more time. Manager Much advised we have the technical committee set up and this would be a good item for them to review. The Committee consists of Gordon Falck, Tim Hamblin, Mike Sambs. Attorney Thiel questioned the price of the agreement; Tom reported to get the total price we would need to look in two places in Exhibit C. Page 1 lists several categories of services totaling $1,083,000 and page 3 has the fee for the on-site project representative for $318,700. The on-site project representative is the person who will be here full time during the project with a part time technician. The total contract amount would be $1,401,700. The initial estimates last September were $1.52-$1.82 million which included the biosolids storage building. Commissioner Zielinski questioned the total listed on page 1; the total contract amount listed does not add up to the amount for each category. Tom will check further in this discrepancy.

The Commission skipped to the agenda items relating to the Clean Water Fund. Amy Vaclavik reported on the Clean Water Fund (CWF). The new chlorine tanks can be included in the CWF if we order them ahead of time; since the price is over $25,000 we would need 3 quotes. Amy reported she needs confirmation from Attorney Thiel for equipment purchased that was not the lowest bid price that it was handled in an appropriate manner. Commissioners further discussed replacing the current chlorine storage tanks. After discussion motion by Commissioner Sambs, seconded by Commissioner Bauer to use the replacement fund to order two replacement tanks to replace the failing sodium hypochlorite tanks at a cost not to exceed $30,000. Further discussion ensued on the installation of the tanks and who would install. Commissioner Falck indicated it was his intent that we should order these tanks now to have them on site if there was a total failure of the current tanks. It was the consensus the tank installation should be included in the project for the contractor to install. After further discussion was complete; vote was taken to purchase replacement tanks, motion to purchase the tanks carried unanimously. Amy reported to the Commission she had misunderstood when the BAN would come due; she thought the due date was December 31, the actual due date is December 1. This does create some concern on her part for the cash flow for the Commission.

The Commission returned to the agenda as published. Tom Kispert reported there will be the contractor walk thru near the end of August. Tom questioned if the Commission would like to take formal action to submit the final documents to the DNR or if they should just be sent. Tom should just send the documents. Tom reported we will need to submit plans to the City of Menasha Planning Commission for doing asphalt work. The Commission will need to look at site

lighting and landscaping to meet current requirements. Tom questioned the Commissioners if they would like a plaque included with the project; it would be similar to the current plaques in the lobby. It was the consensus to include a plaque in the project. The Commission discussed insurance for the project; staff was instructed to look at minutes from previous meetings on actions that may have been taken earlier on this subject and to put this on the agenda for the next meeting. Tom will find out what insurance levels Grand Chute Menasha West required during their project. Tom reminded the Commission the 2010 year model genset will need to be installed and operational by December 31 to meet EPA air emission mandates. In order to be able to meet this deadline we will need to get shop drawings for the new switchgear and get the new switchgear ordered ahead of schedule. A change order will be used to add the switchgear to the Cummins NPower contract and this cost would be deducted from the general contract. Tom will have the cost detail and change order at the next meeting. Tom discussed using local firms for system programming and service work. Attorney Thiel provided an opinion on using a contractor for highly specialized services. Manager Much and Rob Franck discussed who should hire this firm and it was felt it would be best to include this firm as a subcontractor under the current Systems Control & SCADA contract with McMahon. Further discussion and explanation ensued on the detail of the technical services this subcontractor would be providing.

Tom Kispert presented and discussed change order #1 for Contract P for a deduct of $93.84. After discussion motion by Commissioner Falck, seconded by Commissioner Hamblin to approve change order #1 for Contract P to deduct $93.84. Motion carried unanimously.

The Commission decided to take a short break at 10:55 am; the meeting resumed at 11:04 am.

Attorney Thiel discussed the agreement from Steinacker Farms to landspread Commission biosolids. They have been given verbal approval and have been doing so. Attorney Thiel created an amendment to the current biosolids removal contract; also included was a change of terms with a 60-day cancellation notice. Attorney Thiel is looking for a motion to approve the contract amendment. President Youngquist questioned if the Steinacker's were shown this amendment; we don't think they have been shown this amendment. After discussion, motion by Commissioner Sambs, seconded by Commissioner Zielinski to approve the biosolids removal contract amendment. Motion carried unanimously.

Manager Much reported on a request from a firm named Agrapur to accept their waste while they shut down a portion of their system. They are asking several treatment plants if they would be willing to accept their waste. This would occur over a 3-week period. We would need to review our current rate structure to verify if the rates are sufficient to cover our costs. After discussion motion made by Commissioner Sambs, seconded by Commissioner Hamblin to accept the waste from Agrapur on a limited basis. Motion carried unanimously.

Motion made by Commissioner Zielinski, seconded by Commissioner Falck to convene into closed session pursuant to Wis. Stats. § 19.85(1)(e) to discuss strategy concerning the Contracted Industrial User as it affects the financing of the Sewer Plant Project. Also, pursuant to Wis. Stats. § 19.85(1)(e) to discuss identified real estate options for placement of a building to be used by the Commission and hauling and spreading proposals for which bargaining reasons and developing acquisition strategy require a closed session to protect the public investment and

spending of public funds. Also, pursuant to Wis. Stats. § 19.85(1)(e) to confer and review oral legal advice by legal counsel to the Commission as to potential litigation with Insurance Carriers as it relates to the lawsuit(s) commonly referred to as the Fox River litigation, and to take action in closed session concerning legal bills. By roll call vote taken, motion carried unanimously, by Commissioners Zielinski, Bauer, Falck, Hamblin, Sambs, Youngquist.

Meeting convened into closed session at 11:20 a.m.

After discussions, motion made by Commissioner Zielinski, seconded by Commissioner Hamblin to adjourn the closed session and return in Regular open session. By roll call vote taken, motion carried unanimously by Commissioners Zielinski, Bauer, Falck, Hamblin, Sambs, Youngquist. The Commission returned to Regular open session at 12:06 p.m.

Motion made by Commissioner Hamblin, seconded by Commissioner Zielinski to adjourn the meeting. Motion carried unanimously. Meeting adjourned at 12:06 p.m.

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President Secretary

THE NEXT REGULAR MEETING IS SCHEDULED FOR TUESDAY August 28th, 2012.