



**NEENAH-MENASHA SEWERAGE COMMISSION**

101 Garfield Avenue • Menasha, Wisconsin 54952-3397

(920) 751-4760 • Fax (920) 751-4767 • e-mail [info@nmscwwtp.com](mailto:info@nmscwwtp.com)

September 13, 2012

Mayor Don Merkes  
City of Menasha  
140 Main Street  
Menasha, WI 54952

RE: NMSC Wastewater Treatment Plant Modification Project

Dear Mayor Merkes;

This letter is to follow up the August 30, 2012 letter from myself to you and our appearance before the Common Council on Tuesday September 4, 2012. As presented in the letter and discussed at the Council Meeting, the NMSC is looking for action from the City of Menasha to help facilitate the steps needed by the NMSC to obtain additional short term financing and to continue on the path for the NMSC to obtain Clean Water Fund loans for the Wastewater Treatment Plant Modification Project through the five communities that make up the NMSC. The items we need the City of Menasha to address are:

- Motion to Accept the Agency Agreement in concept
- Authorization to submit the variance request to the State to receive the variance to issue taxable Clean Water Fund Bonds
- Authorize the "Authorized Representative" (Director of Public Works) to sign the Clean Water Fund Application
- Approve an amending motion to remove the following contingency in the motion passed by the City of Menasha on September 19, 2011 – "contingent on a guarantee from Sonoco for debt service payment and a hold harmless guarantee for a subsidy payment". The amended motion would then be: "to approve financing for the City of Menasha portion of the Neenah-Menasha Sewerage Plant Upgrade/Improvements Project utilizing Clean Water Fund Loans (CWF) in an amount not to exceed \$5.5 million dollars and if there is a cost increase in the project the City of Menasha would be given the option to obtain Clean Water Funds to cover the increase".

Please feel free to contact me if you have any additional questions or concerns. The phone number at the NMSC is 751-4760.

Sincerely,

A handwritten signature in cursive script that reads "Randall Much".

Randall Much  
General Manager

# THIEL LAW OFFICE

P.O. Box 7560 Appleton, WI 54912-7075

August 16, 2012

B. Eric Shytle  
Haynsworth Sinkler Boyd, P.A.  
1201 Main Street, 22<sup>nd</sup> Floor  
P.O. Box 11889  
Columbia, S.C. 29211-1889

Re: Neenah Menasha Sewerage Commission

Dear Mr. Shytle:

This letter is in response to your March 19, 2012 letter and our telephone call concerning the same. To assist on the review I have enclosed your letter.

While I appreciate the efforts of your client to reach an agreement my client is not in a position to agree to a capacity-based formula for payment of the proposed CWF project debt service subject to the two stated conditions of your letter.

Our reasons are as follows. I have enclosed a copy of an excerpt of the September 19, 2011 minutes of the city Council of the City of Menasha, Wisconsin. Please refer to section "I," Section 2, which states that the City of Menasha has agreed to participate in the CWF loans "contingent on a guarantee from Sonoco for debt service payment ...." I am bound to follow this motion by this member of our Commission.

In your March 19, 2012 letter, on the top of the second page at the numbered paragraph "2" the text indicates that your client, properly stated as U.S. Paper, would be relieved of its obligation to make payment on the debt service in the event that the local mill did not contribute load to the WWTP for three consecutive months. I can quickly envision that if the mill were to be shut down that U.S. Paper would only "guarantee" the debt service for three months. I am certain that is not the intent of the City of Menasha.

In a good faith effort to resolve this issue so that we can move forward with the CWF loan I propose the following subject to the approval of the City Council of the City of Menasha. I propose that your client commits to a "capacity-based formula" concerning payment for the project debt service at all times that the mill is in operation following the WWTP expansion buildout and for the term of the CWF loans. I would recommend that everyone agrees that this is in essence a "guarantee" while the mill is in business. The anticipated term of the CWF loan is 20 years. I propose that at the beginning of the term of the CWF loan, that in the event your client shuts the mill it "guarantee" to continue

its debt service payments for a period of 10 years following non-use of the WWTP or closure of the mill. However, after the start of the CWF loan term, if the mill remains in full operation and use of the WWTP for five years the ten-year obligation would be reduced to five years for the balance of the CWF loan term. Then, assuming an additional five years of continuous mill operation and use of the WWTP (bringing us up to a total of 10 years of continuous mill operation and use of the WWTP) the five-year obligation will be reduced to 2.5 years for the balance of the term of the CWF loan. This proposal is stated with the understanding that any such agreement would be subject to discharge in bankruptcy. This method reduces your client's risk significantly after 10 years of continuous operation. Again, this would be subject to the City of Menasha needing to amend its Motion, but I am willing to advocate for this change.

Your March 19, 2012 letter also asked for negotiation of a fixed rate percentage that "more fairly considers U.S. Paper's share of the financed improvement." It is my position that we have provided you with sufficient data to show that the applicable figure of 16.7% that is attributable to your client's share of the financed improvements is the fair allocation. However, you also request that an average loading over the past five years be used and calculated on 50% of flow and 50% of suspended solids. I have reviewed that carefully with personnel from the WWTP and such a formula would not be acceptable because that calculation, as stated in your letter, excludes the B.O.D. load. I am informed that the WWTP operates with a 50% B.O.D. load that is equitably factored into the costs. So while we believe we understand your stated concept, it is not feasible for us to agree to not recognize the fact of the B.O.D. treatment in this negotiation.

Your March 19, 2012 letter, upon review by the WWTP personnel, contains an inaccurate assumption that the loading base formula is not favorable for your client on the basis that it is allegedly "heavily weighted to B.O.D." I am informed this is not accurate. Although it is weighted toward B.O.D., it is not unfavorable because the B.O.D. is weighted the same for all users. Just because another user has more flow, they are still charged at the same rate as your client as to treatment of B.O.D. It costs more to treat B.O.D. than other types of treatment for suspended solids or flows. This means there is parity in the B.O.D. charge component. I am informed that about 50% of the operating costs to run the WWTP are incurred to treat the B.O.D. Twenty-Five Percent is to treat flow. Twenty-five percent is to treat suspended solid. These are approximate percentages, but fairly static over time. I have attached a sheet to show you the data prepared by Mr. Voigt for the WWTP of the summaries of flow, B.O.D. and suspended solids and then this data is audited/verified by Schenck & Associates, the independent auditors.

It appears all parties are in agreement that it benefits your client and the municipal members of the Commission to be able to access the CWF loans. In order to get us to that position, I have to honor the desires of the City of Menasha. In order to do that I need your client to agree to the motion passed by the City of Menasha or tentatively agree to my proposal and I will have to convince the City of Menasha to agree to the same.

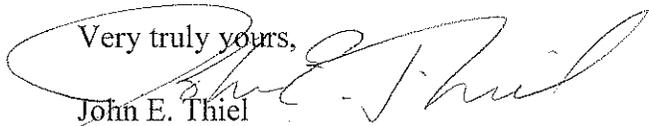
B. Eric Shytle  
August 16, 2012  
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Please contact me upon your review of this letter so that we may continue to discuss this further and try to reach a mutually acceptable agreement if possible. Time is now getting to be of the essence as we are needing to apply for all the CWF loans. The status is that we should be receiving bids for WWTP buildout soon and the numbers appear to be less than those first indicated and the project needs to keep moving forward.

Thank you for your continued cooperation and communication on this issue.

JOHN E. THIEL LAW OFFICE, LLC

Very truly yours,

  
John E. Thiel

Enclosures

Cc: NMSC (w/enc.)(via e-mail)

Haynsworth  
Sinkler Boyd, P.A.

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March 19, 2012

John E. Thiel, Esquire  
Thiel Law Office  
P.O. Box 7560  
Appleton, WI 54912-7075

Re: NMSC Proposal  
HSB File No. 04711.465

Dear John:

Thank you for your continued efforts to advance the negotiations between the Neenah-Menasha Sewerage Commission ("NMSC") and U.S. PaperMills, Inc. ("U.S. Paper").

On behalf of U.S. Paper, I would like to emphasize two points that are highly relevant to our position. First, the existing Agreement between NMSC and U.S. Paper requires that capital costs be paid according to a loading-based formula. That being the case, U.S. Paper has no obligation to NMSC if it decreases or suspends operations. From that perspective, agreeing to a fixed-rate commitment for a period of twenty years greatly reduces U.S. Paper's flexibility and increases its risk. After lengthy consideration, U.S. Paper has determined that although it is willing to bear a fixed commitment if its loading decreases, it will nonetheless insist on some protection in the event that it ceases operations at the Menasha plant. We feel that U.S. Paper, as an industrial customer, should not be under the same parameters of the municipalities for the repayment of the Project costs.

Second, we believe that even the current loading-based formula disfavors U.S. Paper in that it is heavily weighted to B.O.D. In other words, U.S. Paper pays proportionately more than other users with the same or higher flows, or the same or higher suspended solids concentrations. Moreover, I understand that the proposed project is for treatment of solids and does not implicate B.O.D. For these reasons, we believe it unfair to base the fixed percentage on the existing formula. Moreover, we believe it is unfair to choose a single year to calculate our loading base for a 20-year fixed rate formula.

Therefore, U.S. Paper proposes that it will commit to a capacity-based formula for payment of project debt service subject to the two following caveats:

1. Negotiation of a fixed rate percentage that more fairly considers U.S. Paper's share of the financed improvement. We propose that we use the average loading of U.S. Paper over the past five years, and that loading be calculated as comprising fifty percent (50%) flow and fifty percent (50%) suspended solids. This calculation would thus exclude B.O.D.

John E. Thiel, Esquire

March 19, 2012

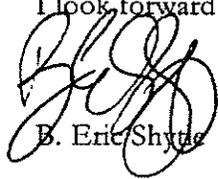
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2. The agreement by NMSC that if U.S. Paper does not contribute load to the plant for a period of three consecutive months, its obligations to pay debt service on the Project will terminate.

I emphasize again that U.S. Paper understands the interest-rate savings that could be obtained by a borrowing from the Clean Water Fund, and is grateful for the efforts of NMSC and its member municipalities to attain the lowest borrowing costs for the Project. To that end, U.S. Paper believes that its offer to accept a fixed rate formula, subject only to determining a fairer allocation and to including a reasonable termination provision, is more than reasonable.

As we have noted in prior communications, the proposal contained herein remains subject to approval by U.S. Paper's board of directors and satisfaction of the other conditions detailed in those communications.

I look forward to hearing from you. Best regards,



B. Eric Shyne

#### H. ITEMS REMOVED FROM CONSENT AGENDA

1. Moved by Ald. Krueger, seconded by Ald. Sevenich to approve Common Council minutes of 9/6/11.  
**Motion carried on roll call 7-0.**
2. Moved by Ald. Zelinski, seconded by Ald. Langdon to approve recommendation to award Menasha Utilities Sedimentation Basin Scraper Modification, Head Shaft Replacement Project Contract #M0002-910184 to August Winter & Sons, Inc. in the amount of \$68,100.00  
General discussion on deprecation fund and the amount set aside for replacing equipment.  
**Motion carried on roll call 7-0.**
3. Moved by Ald. Zelinski, seconded by Ald. Langdon to approve Change Order No. 1 for Menasha Utilities Sedimentation Basin Scraper Modification, Head Shaft Replacement Project Contract #M0002-910184 to August Winter & Sons, Inc., deduct of \$5,600.00  
**Motion carried on roll call 7-0.**
4. Moved by Ald. Sevenich, seconded by Ald. Krueger to refer City of Menasha Discipline and Grievance Procedure Policy back to Personnel Committee.  
**Motion carried on roll call 7-0.**
5. Moved by Ald. Sevenich, seconded by Ald. Krueger to refer Intergovernmental Cooperation Agreement Impartial Hearing Officers back to Personnel Committee.  
**Motion carried on roll call 7-0.**
6. Moved by Ald. Zelinski, seconded by Ald. Langdon to approve raising the Marina seasonal slip rental rate from \$37.50 to \$37.75 per foot for 2012.  
General discussion on annual revenue from slip rentals and rental rates at other area marinas.  
**Motion carried on roll call 7-0.**

#### I. ACTION ITEMS

1. Accounts payable and payroll for the term of 9/8/11 to 9/15/11 in the amount of \$515,616.00  
Moved by Ald. Klein, seconded by Ald. Langdon to approve accounts payable and payroll.  
**Motion carried on roll call 7-0.**
2. Approval of City of Menasha participation in Neenah-Menasha Sewerage Commission building project  
Moved by Ald. Englebert, seconded by Ald. Langdon to approve financing for the City of Menasha portion of the Neenah-Menasha Sewerage Plant Upgrade/Improvements Project utilizing Clean Water Fund Loans (CWF) in an amount not to exceed \$5.5 million dollars contingent on a guarantee from Sonoco for debt service payment and a hold harmless guarantee for subsidy payment and if there is a cost increase in the project the City of Menasha would be given the option to obtain Clean Water Funds to cover the increase. General discussion on the funding procedure. Tom Kispert from McMahon Engineers/Architects answered questions.  
**Motion carried on roll call 7-0.**
3. Counter-Offer to Purchase, Riverside Building, Inc. (Dr. Larsen) 81 & 87 Racine St. and 504 Broad St. lots (Update)  
CA/HRD Captain explained the broker submitted the counter-offer to Dr. Larsen. Dr. Larsen had been out of the area, so he was not able to respond by the deadline date. A provision was included in the counter-offer that the Council must review any counter-offer from Dr. Larsen.

#### J. ORDINANCES AND RESOLUTIONS

1. O-10-11 – An Ordinance relating to bicycles on sidewalks (Introduced by Ald. Sevenich)(2<sup>nd</sup> Introduction)  
Moved by Ald. Sevenich, seconded by Ald. Langdon to adopt O-10-11.  
Moved by Ald. Sevenich, seconded by Ald. Langdon to amend to wording of proposed substitute amendment #1 to O-10-11.  
Moved by Ald. Krueger, seconded by Ald. Sevenich to amend to include "No person shall ride a bicycle upon a sidewalk along the west side of Racine Street from Third Street to Main Street."  
**Motion on second amendment carried on roll call 7-0.**  
**Motion on first amendment carried on roll call 6-1. Ald. Zelinski – no**  
**Motion to adopt O-10-11 as amended carried on roll call 6-1. Ald. Zelinski – no.**

**NEENAH-MENASHA SEWERAGE COMMISSION**

Summary of Flow, BOD, and SS received for billing purposes

	<u>12/31/2011</u>						<u>TOTAL USAGE</u>
	<u>FLOW</u>	<u>FLOW %</u>	<u>cBOD</u>	<u>cBOD %</u>	<u>SS</u>	<u>SS %</u>	
Neenah (net)	2,080.679	51.11%	3,242,290	40.55%	3,045,954	39.01%	<b>42.45%</b>
Menasha (net)	1,060.705	26.05%	1,477,393	18.48%	2,434,618	31.18%	<b>23.28%</b>
Tn Neenah S.D. 2	36.229	0.89%	76,000	0.95%	119,091	1.53%	<b>1.08%</b>
T.M.U.D. (S.D.4) (net)	664.493	16.32%	818,048	10.23%	1,087,697	13.93%	<b>12.47%</b>
Waverly S.D.	138.617	3.40%	231,998	2.90%	256,118	3.28%	<b>3.10%</b>
U.S. Paper Mills	90.363	2.22%	2,149,840	26.89%	865,628	11.08%	<b>17.62%</b>
<b>TOTAL</b>	<b>4,071.086</b>	<b>100.00%</b>	<b>7,995,569</b>	<b>100.00%</b>	<b>7,809,106</b>	<b>100.00%</b>	<b>100.00%</b>

**3-YEAR AVERAGE (2009 - 2011)**

	<u>3-YEAR AVERAGE (2009 - 2011)</u>						<u>TOTAL USAGE</u>
	<u>FLOW</u>	<u>FLOW %</u>	<u>cBOD</u>	<u>cBOD %</u>	<u>SS</u>	<u>SS %</u>	
Neenah (net)	1,969.763	50.78%	3,265,355	42.34%	3,070,133	42.30%	<b>44.15%</b>
Menasha (net)	987.932	25.45%	1,341,456	17.42%	1,953,273	26.79%	<b>21.49%</b>
Tn Neenah S.D. 2	39.314	1.03%	92,303	1.20%	123,791	1.73%	<b>1.30%</b>
T.M.U.D. (S.D.4) (net)	657.887	16.99%	845,681	10.98%	1,188,667	16.46%	<b>13.64%</b>
Waverly S.D.	133.727	3.47%	234,300	3.05%	244,956	3.38%	<b>3.22%</b>
U.S. Paper Mills	88.616	2.29%	1,931,109	25.00%	691,238	9.35%	<b>16.20%</b>
<b>TOTAL</b>	<b>3,877.239</b>	<b>100.00%</b>	<b>7,710,204</b>	<b>100.00%</b>	<b>7,272,058</b>	<b>100.00%</b>	<b>100.00%</b>

**5-YEAR AVERAGE (2007 - 2011)**

	<u>5-YEAR AVERAGE (2007 - 2011)</u>						<u>TOTAL USAGE</u>
	<u>FLOW</u>	<u>FLOW %</u>	<u>cBOD</u>	<u>cBOD %</u>	<u>SS</u>	<u>SS %</u>	
Neenah (net)	1,983.416	50.82%	3,144,534	42.38%	3,171,850	43.92%	<b>44.59%</b>
Menasha (net)	1,006.318	25.79%	1,340,837	18.09%	1,956,287	27.08%	<b>21.99%</b>
Tn Neenah S.D. 2	43.282	1.12%	89,688	1.22%	127,631	1.83%	<b>1.35%</b>
T.M.U.D. (S.D.4) (net)	641.825	16.47%	782,743	10.56%	1,099,619	15.42%	<b>13.05%</b>
Waverly S.D.	133.274	3.44%	226,784	3.06%	237,409	3.29%	<b>3.20%</b>
U.S. Paper Mills	91.542	2.36%	1,830,315	24.68%	610,489	8.46%	<b>15.82%</b>
<b>TOTAL</b>	<b>3,899.657</b>	<b>100.00%</b>	<b>7,414,900</b>	<b>100.00%</b>	<b>7,203,286</b>	<b>100.00%</b>	<b>100.00%</b>
	3,899.657	100.00%	7,414,900	100.00%	7,203,286	100.00%	100.00%