

## Item 23-1357: Authorization to opt-out of 3M and Du Pont PFAS class action settlements

### Utilities Committee

Tues, Nov 07, 2023 4:30PM

#### Alderson Vered Meltzer (District 2) 04:42

Moving down we have 23-1357 authorization to opt out of 3M and DuPont PFAS class action settlements.

#### Alderson William Siebers (District 1) 04:50

Move for approval.

#### Alderson Israel Del Toro (District 4) 04:51

Second.

#### Alderson Vered Meltzer (District 2) 04:52

All right. We have a motion and a second. Director Shaw, did you want to take this one?

#### Director Chris Shaw (Utilities) 04:56

I think I'll defer to the attorney first if that's all right,

#### Alderson Vered Meltzer (District 2) 04:58

and what's your mic? Director three. There you go.

#### Attorney Christopher Behrens 05:01

Thank you. Director Shaw and I are going to take team on this as we did in the memo. And recall, we spoke with the committee about two weeks ago, foreshadowed the conclusion that we really didn't waver from, and doing significant amount of research since that time. There have been a great deal of discussions between the two of us looking at all different kinds of angles with this. We were able to locate a an online resource that helped give an idea of what a potential settlement for the city might look like, and that's within the memo to. And collectively between the two companies, that's in the ballpark of \$2 million, which, on its face, that it's a significant amount of money. So, we did not take this analysis lightly.

#### Attorney Christopher Behrens 05:52

I'll let Director Shaw put that number into some broader context within the utility and also, within the context of what the utility in the city could face in the future should regulations change. I think what I've found in having these conversations, we continue to look back at the fairly recent history the city had with the Fox River cleanup, and not just Appleton but other communities also, but the amount of expense that was involved in that. I can recall that the city had to hire special and I forget exactly what their title was, but specialists in sort of forensic investigation into...

#### Director Chris Shaw (Utilities) 06:43

anthropological

#### Attorney Christopher Behrens 06:48

—it—for insurance companies, basically old insurance companies to figure out who the new insurance company was—to go back a couple decades and figure out what insurance carrier may have been in play at that point in

time. I bring that up because if interest settlement like this now, accept the payout, 20 years from now, 30 years from now, there wouldn't be that ability to go back. Let's say DuPont or 3M file bankruptcy—which that's a risk also, that could happen. But there's always the ability to outlook at possible insurance carriers that might be available too. But if you settle, you settle with not just the company but with your carriers. So that played a big part in our, our analysis, just thinking about that history.

**Attorney Christopher Behrens 07:38**

And then the best analogy I can come up with for this is almost if you think of it like an insurance policy. Now, we're not giving up anything. I mean, we're not paying anything; we're—we would be giving up a potential settlement that could be in the ballpark of \$2 million. But you think of that, in terms of a insurance policy that goes well into the future, shouldn't expire, and like an insurance policy, you buy those kind of hoping you're never going to need them and best case, maybe you don't. But if the day comes that you do have that claim, and you do need it, you're really happy you've got it. Kind of look at this as an insurance policy for the future to give potentially future generations sitting in my seat, director's seat, your seats, the ability should they need it to make a claim and have a more robust recovery should the city need it.

**Attorney Christopher Behrens 08:38**

So, with that, I'm going to turn it over to Director Shaw. As he's so good at he'll get into some of the more technical aspects, as well as kind of putting some context around a \$2 million settlement amount within the context of what that might mean.

**Director Chris Shaw (Utilities) 08:56**

Thank you. So first, we would look at the regulatory standard right now which we're meeting, which is great. So, it's—for PFAS, the two compounds were looking at in this in this settlement, our PFOS and PFOA, they're the two most common PFAS compounds, but there's literally hundreds and hundreds of PFAS compounds. It—that's a broad care—category for a type of compound. It's got a strong carbon—here I go—and a fluorine bond. It's real, real strong. And it actually takes incineration to break that apart. It's similar to PCBs.

**Director Chris Shaw (Utilities) 09:30**

So, at any rate, the EPA now is looking at a new proposed MCL, or a maximum contaminant level, of four for each of those. So, we're going from 70 to four, right? And if you follow this along in time, the MCLs will probably change and become less and less over time though. We may be talking decades, you know before that happens. So, I just want to—because that's kind of how PCBs work. The you first have to have the available research, it has to be vetted, peer reviewed. You know, they determined by statistics that there are these health risks. So—and there are a lot with PFAS compounds. So developmental issues, cholesterol, obesity, some types of cancer, autoimmune problems. But statistically, it's kind of hard because there's just not enough work that's been done, not enough research that's been done. So, it will come out over time. That's how these things work. So, they don't know enough right now.

**Director Chris Shaw (Utilities) 10:33**

Okay, so we've kind of laid that picture out. Now, what does a city like Appleton do? They have their water utility, right? And they will end up having to meet the MCL, that maximum contaminant level, whatever that is. And there's ways to clean the water, if you will. So, right now, utilities, water utilities in Wisconsin, I think it's like between five and 7%, wouldn't be able to meet the standard. And then obviously, as the, as you ratchet down, there'll be more and more, but for us in Appleton, we would have to put in some treatment. And so just for context, I want to talk about what that would look like.

**Director Chris Shaw (Utilities) 11:14**

When a water utility puts in equipment, a treatment, they're putting it in for 20 years, right? They're gonna depreciate it, and they're gonna have operating costs. So, it's really total life cycle costs. So, the plant—when we look at the plant, and I referenced that in the memo—it's like a \$400 million lifecycle costs for that that water plant that's out in Menasha. Okay, if you were to add on reverse osmosis, or GAC, granular activated carbon, filters to remove those compounds and have this reject water and this this waste that would have to be incinerated, we're looking at probably \$75 million. So that's an add on, and then operating costs of similar expense. So, you're up to \$150 million.

**Director Chris Shaw (Utilities) 11:57**

So right now, we have a \$400 million plant kind of in a 20-year life, but this would add, like \$150 million. So, you're increasing the overall size of the facility by like 30. I don't have a calculator, but like by 30%. So, you can imagine that that cos. And then at the end of that 20 years, we start anew, right. We start anew. We take out the old equipment, transition, and put in new equipment. So, there is a risk is what I'm trying to, you know, kind of convey here of long term, Cap Ex/Op Ex, expenses to the city, should we have to comply with an MCL from the EPA and the state. And we would do that, but it would come at the at the cost of the rate payers of the City of Appleton.

**Alderson Vered Meltzer (District 2) 12:49**

Thank you. Yeah, I think that it's very significant that the \$2 million, while it sounds like a large settlement, wouldn't even come close to any particular action we might have to take.

**Director Chris Shaw (Utilities) 13:02**

So, their settlement, the 2 million—to put that into context, that wouldn't cover the engineering for the project. So, the equipment—right?—the contractor to put in maybe GAC or reverse osmosis in Appleton, it wouldn't cover the engineering. It wouldn't cover the paperwork. 36 days of revenue, so we're, you know, that's what they're, they would be funding us with the settlement.

**Alderson Vered Meltzer (District 2) 13:26**

Thank you. Any comments or questions?

**Attorney Christopher Behrens 13:28**

Chair, can I just add a bit more context?

**Alderson Vered Meltzer (District 2) 13:31**

Yes, please.

**Attorney Christopher Behrens 13:32**

So very candidly, we're—Director Shaw and I had a conversation. He is a man of science. He likes the science with a very defined end result that you can then work back from and verify that result. And he and I had a fun conversation. We're about as far away from that right now as we can be and doing this analysis, because so much is unknown. So, we're doing the best we can with the information we have. And ultimately, it's a decision that you and you'll make a recommendation, this Council will have to make. Nobody will know what the right answer is and may not know for decades to come. But we'll do the best we can right now with what we have.

**Attorney Christopher Behrens 14:19**

One other piece regarding the settlement, not that it necessarily makes a difference. But it's our understanding, too, that that wouldn't necessarily be a lump sum, that that may be paid over the course of a 10-year period. So, I just wanted to share that piece of information also.

**Aldersperson Vered Meltzer (District 2) 14:35**

Thank you. Aldersperson Doran, go ahead.

**Aldersperson Chad Doran (District 15) 14:38**

Thank you. I guess just a sort of process question. At the beginning of the memo, you mentioned that we received this notice in that if we don't want to be part of the settlement, we have to opt out. Why are we all lumped into this, I guess, in general to begin with?

**Director Chris Shaw (Utilities) 15:00**

Well, that's the settlement for one. And the settlement is somewhat unusual that you have to opt out. If you don't opt out, you will be in the settlement and you'll lose your rights to a future claim. And so, there's just debate about just that aspect of it. But that's part of the 3M and DuPont settlements, so.

**Attorney Christopher Behrens 15:22**

And to be clear, Appleton is in very good company in this there are, gosh, I hesitate to guess how many water providers around just the state of Wisconsin are in this, but it's national 10s if not more in Wisconsin, and then probably hundreds if not more across the country.

**Director Chris Shaw (Utilities) 15:47**

Maybe 60 in Wisconsin. There's quite a quite a few.

**Attorney Christopher Behrens 15:49**

And also, folks are all over the board with what they're going to do with this. So, we've tried to take a pulse of where others are with it. And—

**Director Chris Shaw (Utilities) 16:02**

I can go over that just real quick. Normally, when we have regulatory issues, or we just have issues in general, water utilities get together. There's a legal advocacy group that we're all a part of, and we'll communicate. And so, there was a poll asked about—not that they would use this to justify their decisions, but just "Where's everybody at? This is so new." And so, there was 144 water utilities on that email string, and there was zero responses because they're caught like us having limited information. I mean, we're literally going to the site, the claim site—right?—looking at the settlement language ourselves. And then like, for Attorney Behrens, myself, last week, we're interpolating data from a chart, and that was just fresh that day. So that's what got us to \$2 million. So not a lot of info information. We can't get it from the league. We can't get it from our municipal environmental group—the legal advocacy group—they been contradicting. So, we think we understand as much as anyone else—right?—by going to these venues. The league had a webinar, that had that last Wednesday or Thursday? And then there was, you know, back and forth about "Well, this contradicts what we heard." Right, that kind of thing. So. So.

**Aldersperson Chad Doran (District 15) 17:30**

I guess Attorney Behrens, in your experience—having limited information for the city to make a recommendation here feels, I don't know, a little unfair, I guess for all of us, right? What—do we have some sort

of option? Or why is it that we're being forced into making a decision here to either be in or be out of this without really having any concrete information as to what our options really are?

**Alderman Chad Doran (District 15)** 17:49

Is that—those are the rules that have been put in place by the bankruptcy court.

**Alderman Chad Doran (District 15)** 18:01

Okay.

**Attorney Christopher Behrens** 18:01

And that frustration is, I think, shared across the state, if not across the country by others like us that are in the same situation. What I will say is, I feel like we are in a better position than many in just the amount of time that we've taken in analyzing it the best we can to make a recommendation with the information that we have. And like I said, we—nobody will know what the right decision was and may not—it may take decades to bear out. But we are in a position where we had a limited amount of time so we've put a lot of effort into just coming up with what we think, under that that stress of that time, the direction that we think makes sense. But ultimately, with respect, it is the decision of the governing body.

**Alderman Chad Doran (District 15)** 19:05

So, because the bankruptcy court sort of set the ground rules here, we don't really have the option to say "Hey, we need more time to go over this thing." Okay. Okay, that's—I appreciate the clarification there. What are some of the other utilities who actually are impacted by this around Wisconsin like Marinette, Wausau, Eau Claire, Lacrosse or one of those, like, what are they doing? Do we know? And I'm not sure that—

**Director Chris Shaw (Utilities)** 19:27

Those are so separate claims. I don't think they're—

**Alderman Chad Doran (District 15)** 19:30

They're not involved in the class action suit?

**Director Chris Shaw (Utilities)** 19:33

I—no, those are sort of separate claims, I believe. So those are much greater I believe.

**Attorney Christopher Behrens** 19:39

They are they are in the class. Wausau's in the class.

**Director Chris Shaw (Utilities)** 19:42

Well, yeah, I mean, aren't they going for addit—they're going for more of their expenses. They're not going for—I don't know. I'm not.

**Director Chris Shaw (Utilities)** 19:51

I thought they were.

**Attorney Christopher Behrens** 19:51

I can't, I can't—

**Attorney Christopher Behrens** 19:54

—what their amount is or what—

**Director Chris Shaw (Utilities) 19:56**

I thought Peshtigo, Marinette, and Wausau were communities that were suing, and I thought that was a separate suit.

**Alderson Chad Doran (District 15) 20:02**

So, I guess I'm—well, I'm just asking, because if they're if they're both suing separately because they already have these issues and are included in this class, whether or not they choose to, you know, take the settlement or not, why wouldn't we have that same option in the future?

**Attorney Christopher Behrens 20:21**

Well, I—yeah, that's a fair question. I guess I want to get back to one of the technical aspects, though that we talked about, and a difference when you talk about a community like Wausau that relies on well-based water supply where we are surface water based. So that was another part of the equation that Director Shaw used in his estimation to in doing the overall risk analysis. Those communities that are well-based, are significantly more impacted. And I'm not comfortable talking about what they are or aren't doing, because I don't know. I just know—I can speak to the situation that we are in and being in the class, and they may or may not be also.

**Director Chris Shaw (Utilities) 21:06**

They're over the MCL, right? They're over. Those are contaminated sites.

**Alderson Chad Doran (District 15) 21:12**

So, from our perspective, I guess just getting back to sort of our particular situation, what you've shared here in the middle makes sense. I guess the, the question becomes, we're making an assumption that at some point, the DNR is going to increase the—our requirement is to clean the PFAS out of the water, right?

**Director Chris Shaw (Utilities) 21:38**

I am assuming that.

**Director Chris Shaw (Utilities) 21:42**

Well, and the reason for that is next year, we are starting with UCMR5, which is the unregulated—unregulated contaminant monitoring rule. It's for contaminants that are probably or most probably going to be considered contaminants or pollutants, and they'll have an MCL. And there's 29 PFAS compounds. So that's where I'm getting my like, this is going in this direction, this trajectory, you know, and it just seems apparent that there's going to be more and more limits.

**Alderson Chad Doran (District 15) 21:42**

So.

**Alderson Chad Doran (District 15) 22:16**

And so, we're assuming that PFAS will be one of those 29 or so.

**Director Chris Shaw (Utilities) 22:20**

There's 20 different types or different types.

**Alderson Chad Doran (District 15) 22:24**

Alright, so we're expecting them to just make a rule specific to PFAS.

**Director Chris Shaw (Utilities) 22:28**

There already is for PFOS and PFOA. Those are PFAS compounds. PFAS compounds are just a general category of types, this chlorine and fluorine—or carbon and fluorine. So, there's just going to be more and more, but they're all PFAS compounds. People get confused—I'm not saying that you're getting confused, but it's a general group of compounds.

**Alderman Chad Doran (District 15) 22:51**

Right.

**Director Chris Shaw (Utilities) 22:52**

And there's just more and more, and you'll have individual limits on all of these different compounds in the PFAS classification, or under the PFAS classification.

**Alderman Chad Doran (District 15) 23:01**

I guess what I'm what I'm trying to get at is, at some point in the future, we anticipate having to spend more money to create new infrastructure that's going to help us remove these contaminants—the PFAS contaminants—more so than maybe we do now. Right?

**Director Chris Shaw (Utilities) 23:17**

We don't know what's going to happen in the next decade or two. If we look at—and I'm just using history, because I like using history. We had Cryptosporidium, the Cryptosporidium breakout in Milwaukee, Wisconsin. It took over a decade to get an interim rule before they had a surface water treatment rule. So, we waited 12, 13 years after 400 people died, a million people got sick. That's how long the federal government took to actually require systems to have parasite control. So, I mean, I'm just using that as my foundation of what's kind of going to happen probably.

**Alderman Chad Doran (District 15) 23:55**

So, we don't have a timeline necessarily. Should be two years, could be 20 years.

**Director Chris Shaw (Utilities) 23:59**

I mean, if you don't have the political will, or the funding—right?—you could get into—this is just theoretical. If there's not enough illness or risk, and you're polluting the environment by, you know, creating electricity, manufacturing, you know, chemicals, transporting, you know, it's all a matrix, but I'm seeing it more towards the PFAS compounds will have to be removed.

**Alderman Chad Doran (District 15) 24:35**

So if we get to the point where we're seeing a significant expenditure on the part of the city to have to deal with this that we're not having to do now, and the recommendation here is that we should opt out of the settlement to preserve our right to potentially sue in the future to help recover what we assume would be a higher settlement for our costs to invest in this new infrastructure, what—how do we know that we would even be able to sue these companies for that to recoup our costs for having to deal with this? If it's not—if it's not even really an issue that we face here right now, in Appleton, how do we know that in the future, whenever that might be, that if we have to invest in this infrastructure that we can then go back to 3M and DuPont and sue them to help recover our costs for that?

**Attorney Christopher Behrens 25:30**

I will say the fact that Appleton, among others are included in the class right now, and these companies are willing to pay a decent amount of money for release would indicate that they believe that they have some

culpability now, and I don't think that would necessarily change in the future. Of course, like I mentioned earlier, the risk you run is these companies go bankrupt, and they go away, you lose that opportunity. You don't necessarily lose the opportunity, though to look at other related liable parties like insurance carriers and things of that nature.

**Alderman Chad Doran (District 15) 26:15**

So, there will still stand to be a strong chance, perhaps in the future, that we could potentially sue for more than what this—what we expect the \$2 million settlement to be.

**Attorney Christopher Behrens 26:25**

I think if there wasn't that opportunity, neither of us would be recommending at this point to consider opting out. It would be more a bird in the hand situation.

**Alderman Vered Meltzer (District 2) 26:41**

I'd like to recognize Mayor Woodford to speak.

**Mayor Jake Woodford 26:43**

Thanks. One of the challenges with this consideration is we don't know what the future holds, and there's uncertainty about that. But what we do know is that we will be giving up our rights, or parts of our rights, to sue in the future if we accept the settlement now. And so, this is one variable that we have some control over in terms of what the what the committee and Council ultimately decide to do. And that's—part of the challenge of the analysis is that there's just so much that that isn't known. But if we think about what if, what if Mayor Sutherland had been offered \$100,000 in by Appleton Coated to absolve them of all responsibility for PCB contamination in the Fox River watershed? That's a lot of money in the 70s. And what would that what would that have meant for the cleanup which was hundreds of millions of dollars? \$800 million. So, I think that's what we're trying to weigh here, and that's where the recommendation is coming from is just controlling for the variables we know we have some control over now.

**Alderman Israel Del Toro (District 4) 28:02**

And my thoughts—I've been following this PFAS issue and I don't think that it's just a wild guess or mere speculation that regulation on PFAS compounds is going to increase. Even though Appleton isn't a community that's affected by it, there are communities that are so devastated by it that within that cycle of you know, regulatory adaptation, like, PFAS is the hot topic, PFAS is what's coming. And I think we need to be very forward thinking about that.

**Alderman Vered Meltzer (District 2) 28:32**

And, you know, we're definitely really lucky and in a really good place as far as meeting that—I forget the acronyms for the amount of particulate in our containment. But you know, as those things change, I think it's important for us to always be able to remain ahead. We don't want to ever end up in a situation where we have to clean up contaminants that have already created a health hazard and gotten to that point. So, I think as we learn more and more about PFAS, we might actually find out that, you know, it's not just, you know, as things might change with, you know, other communities or this lawsuit, but as we find out more with science, we might learn more about PFAS that we don't know right now that requires additional mitigation measures and things like that for health and safety. So, I think it's very important that we really take seriously the rights that we do have for future claims.



**Alderson Vered Meltzer (District 2) 29:24**

And I think, you know, it also concerns me for the sake of other communities that you know, if they opt out of this right now how is that going to impact them in the future? I worry about that. Or rather, I meant if they don't, if they can't opt out of this now if they have those immediate emergent needs for that cash for addressing a crisis right now, I'm concerned that then they're going to be locked out of being able to address things as we move forward and learn more about the extent of PFOS comp—compounds.

**Alderson Israel Del Toro (District 4) 29:25**

Alder Meltzer.

**Alderson Vered Meltzer (District 2) 29:28**

Alderson Del Toro

**Alderson Israel Del Toro (District 4) 29:47**

Director Shaw, do you have a follow up comment on that?

**Director Chris Shaw (Utilities) 30:05**

Well, we're talking about water utilities, but I think it's a little broader depending on—and I think Attorney Behrens might be able to elaborate. I can't remember if it's 3M or Dupont, but it doesn't limit—right?—to just the water utility. So, it's storm water, wastewater, wastewater biosolids. And you know, wastewater treatment's a removal process of solids, a separation of water and waste, and then concentrating that waste and doing wetland applying it. What's below the soil? Well, it's the water table, right? And so, you have wells and that sort of thing. And I don't want to be in an, you know, you know, an anxiety zone for people. But these are the topics that are being discussed. So, it doesn't limit it to just water utilities. So, we'd be giving up our legal rights to—right?

**Attorney Christopher Behrens 30:57**

Yeah, glad you brought that up. The 3M settlement is broader, and so it is important within the context to not just think about impact to water coming in and how we're going to treat that. But you mentioned the biosolids that are produced and those gets spread, and I don't want to say too much on the record here, but there's risks that go beyond just the water plant here that potentially in the future, depending on how regulations might change.

**Director Chris Shaw (Utilities) 31:32**

And I'd like to mention the biosolids are—we're at a pretty low level. I'm talking just in general, though, that's a discussion topic. And so, there is there isn't actually a regulatory rule on PFAS compounds in biosolids, but they have already suggested rates, and there's a range, and we're in the we're in the low, the low, the low end of the range, which doesn't require us to do anything. So.

**Alderson Vered Meltzer (District 2) 31:56**

Thank you. Alderson Del Toro.

**Alderson Israel Del Toro (District 4) 31:58**

Thank you, city staff, director, and city attorney, I think that helps us clarify quite a bit. I especially like the analogy of having this \$2 million sort of insurance policy in our pocket and understanding that we can take the time to really look at the science and see how the science and detection ability changes over time to make the most informed decision for our community and thinking that this could potentially be a hundreds of millions of

dollars projects down the road, depending on the severity. And you clarifying that, I think really helps our community better understand this issue.

**Alderson Israel Del Toro (District 4) 32:32**

My quick question, and you sort of alluded this in your comments earlier was because we're not a well—well water sourced city, we're surface water source city, can we identify any potential point sources that might actually be pushing our PFAS levels to say noticeable regulatory levels?

**Director Chris Shaw (Utilities) 32:55**

I don't think there's enough science, but at the levels they're at currently, I believe it's just background. So PFAS compounds are ubiquitous; they're like mercury. So, we've got mercury in the environment; it's air deposition from coal fired power plants. And so, we've got just these very, very tiny parts per trillion. And remember, when I talked about parts per trillion, I don't know if you remember my little, my little—I'm sorry; I'm tired. I have a little bit of a cold and can't sleep at night.

**Director Chris Shaw (Utilities) 33:25**

To kind of put in place kind of what that means, you know, a reference. So, parts per trillion real quick. If you were to stack pennies, one on top of another into a column, and you got it a mile high—right?—of pennies, so everybody can kind of—it's gonna obviously fall over—right? You're not gonna be able to get a mile high. But if you could, and then and then you had a million miles of pennies, and you were to just take the one off the top, that's a part per trillion. So, one mile of pennies, then a million more, or nine hundred—or whatever. You know what I mean? So that's that—so you can tell how small. That's what we're talking about in terms of concentration. So, it's ubiquitous. You have it in your blood right now. We got to remember these compounds have been around since the 40s. You know. So, everybody's familiar with Teflon pans and scotch guard carpeting. I mean, a lot of the products, microwave popcorn, so the popcorn doesn't stick to the stick to the bag, excuse me. These are all common products. So, it's—it is ubiquitous in the environment. It's in your blood. It's in the water. It's in the soil. So.

**Alderson Israel Del Toro (District 4) 34:33**

Just a quick follow up on that not necessarily on the sources but more on the settlement itself. Is it 400 municipalities or 4,000 municipalities that are involved in the overall \$10 billion dollar settlement?

**Director Chris Shaw (Utilities) 34:48**

We just had Wisconsin, right?

**Attorney Christopher Behrens 34:50**

I don't—my apologies. I don't have a specific number of how many....

**Alderson Israel Del Toro (District 4) 34:55**

Well, we see multiple municipalities within Wisconsin opting out to preserve this...

**Director Chris Shaw (Utilities) 35:01**

They don't want to—they don't want to really go on the record or anything.

**Alderson Israel Del Toro (District 4) 35:04**

Right.

**Attorney Christopher Behrens 35:05**

Yeah, I think there—there's a number that are still figuring out what they're going to do.

**Alderson Israel Del Toro (District 4) 35:10**

Gotcha.

**Attorney Christopher Behrens 35:11**

We've had indication that there are some that are either opting out or leaning towards it. We've also heard from others that are going to remain in and take their settlement.

**Alderson Israel Del Toro (District 4) 35:22**

I personally find that this science is still too unexplored as well, and we know very little, and jumping the gun on this funding would not be in the best interest of our community. So, I'll definitely defer to staff decision on this one.

**Alderson Vered Meltzer (District 2) 35:39**

Thank you. Alderson Doran.

**Alderson Chad Doran (District 15) 35:41**

Thank you. I just want to go back a little bit to when we are talking about what maybe some of the other municipalities that are already facing these issues are doing or not doing, and I know that we maybe don't necessarily have a clear direction on them. I think the question I'm trying to get at is more to the certainty of, you know, if they're already facing the issue and are initiating lawsuits or have initiated lawsuits already but are still part of this settlement— could potentially take the settlement, small as it might be for what the issues are already facing—back to that, why couldn't we do the same? I guess I'm just trying to see if the certainty that staff has that we really give up all of our rights in the future, entirely if other communities are already doing the thing that we're saying we can't do.

**Attorney Christopher Behrens 36:33**

So those that are significantly more effective. There's a formula that was provided that Director Shaw used to come up with that \$2 million. Their levels are so much higher. Follow this chart, looking—it takes, I think it was the gallons per—

**Director Chris Shaw (Utilities) 36:52**

Yeah, gallons—gallons per minute.

**Attorney Christopher Behrens 36:54**

—per minute against—

**Director Chris Shaw (Utilities) 36:56**

Concentration

**Attorney Christopher Behrens 36:57**

—measurement of concentration to come up with the amounts. Their settlement amounts are significantly higher, and they're also—you know, their analysis is going to be different because they're looking at more immediate remediation that they need to do and maybe looking at taking that amount now to put towards the remediation versus protracted litigation that's going to come with an expense and time, that maybe they don't have the luxury of either of those. So, they're looking at it from a different perspective than—fortunately, we're

in a pretty good situation, to look at it and do our analysis right now because we don't have any of those immediacies.

**Alderson Chad Doran (District 15) 37:50**

Yeah, appreciate that. And that was one of the things I guess I was gonna touch on, too, that you talked about the sort of time it takes, and back to the example you shared about PCBs and how lengthy of a battle that was for the city. If in the future, the city—some City Council in the future would choose to sue, you know, for these things, we could potentially be looking at it long protracted timeline for something like that as well. And that would, I guess, I don't know if it becomes one of the things where the city in the future, you know, has a shorter timeline to, you know, address something like that or not. But I guess I'm just trying to look at all the different angles of this year.

**Attorney Christopher Behrens 38:35**

Well, I go back to the example I think Mayor Woodford provided that had Mayor Sutherland—had a settlement offer been proposed to Mayor Sutherland, and at the time, it looked like a pretty favorable amount and would have agreed to it that would have left Appleton in a world of hurt as we then navigated a couple decades later the Fox River Cleanup. As far as I know, that was never an option presented. So, it's just an example, but I think it's one—and again, if I could tell you 30 years from now, exactly what was going to happen, I'd be providing you with some very clear direction to take. I don't have that kind of power or crystal ball to look at that. So, we all just have to make the best decision we can with the information we have right now.

**Alderson Chad Doran (District 15) 39:35**

Sure. And thank you. I appreciate that. I know you guys have been working on this and doing your best, and we appreciate that that work. It's just a you know, it's a it's a big decision I think we should shouldn't make lightly. So that's why I'm asking the questions and appreciate the information you're sharing. So, thank you.

**Alderson Vered Meltzer (District 2) 39:54**

Thank you. Any other comments? All right. All in favor? Aye. Any opposed? We have no opposing or abstaining. That is recommended for approval four zero. Thank you everyone. Really appreciate all the hard work that went into this in a very short amount of time.