

MANDAN REMEDIATION TRUST (MRT)
October 5, 2010

Meeting: 206th Official Meeting
Date: October 5, 2010
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:00 A.M.

The MRT meeting was called to order by Jim Neubauer. Fritz Schwindt and Dave Glatt were present. Scott Radig and Marilyn Mertz, Department of Health; Maggie Olson, Office of Attorney General; Ellen Huber, city of Mandan were present.

Minutes. September 7, 2010 minutes have been reviewed; revisions have been made.

Motion. Schwindt moved to approve the amended September 7, 2010 minutes. Second by Neubauer. All ayes. Motion carried.

Bank of North Dakota. The BND statement covered activity ending August 31, 2010 showing a balance of \$8,669,230.25. This is simply to acknowledge that we have received and reviewed.

Brady Martz Audit. Neubauer will contact Brady Martz and see what the status is regarding the MRT audit.

Pay Request. Neubauer received the city of Mandan's bill covering wastewater for July and August 2010 for \$875.61.

Motion. Schwindt moved to approve payment to the city of Mandan for wastewater services for August 2010 in the amount of \$875.61. Second by Neubauer. All ayes. Motion carried.

City of Mandan. Neubauer gave Radig the third quarter utility bills for July, August and September to review. The city pays MDU and they get reimbursed by the MRT. Total cost is \$19,356.00.

LBG. Invoice number 21009038 dated September 14, 2010 from LBG in the amount of \$32,568.19 from LBG. No comments were received from Scott Radig. Noted they do fluid measuring continuously.

Motion. Schwindt moved to approve invoice dated September 14, 2010 to LBG in the amount of \$32,568.19. Second by Neubauer. All ayes. Motion carried.

Morton County. Neubauer has not heard anything from Morton County. Most of the work is done in the LEC basement.

The Medicine Shoppe. No revised billing from Kevin Ritterman at The Medicine Shoppe. They were grinding out and tuck pointing on the north wall of the building last week.

AON Environmental Services Group (AON) Insurance. Neubauer placed a call to AON. The purpose of the phone call is to give the MRT an idea of what long-term insurance they can provide.

Conference call included J.C. Beckstrand of the Minneapolis office and Auchese Chowan (A.C.) from the Chicago office. J.C. indicated their involvement in the call and that he worked with Tag Anderson for a short time as a Risk Management Consultant. AON has worked with the state of North Dakota as consultant to the Risk Management Department for quite a number of years. We were the ones that helped set up that department a long time ago. Worked with Jo Zschomler there and I have got extensive experience working with the state of North Dakota on a variety of areas for the last 20 years. In talking with Tag one day he was mentioning you were talking about risk management issues when I was over there last and different factors that are coming up to the forefront and one of the things he brought up was the Mandan Remediation. Are there different risk transfer or insurance solutions, and so forth. So I said maybe it would be good for us to have a conversation about that and things that can be done and the remediation is looking on the horizon of winding down. That's what brings us to today. A.C. is one of the directors and senior vice president in our environmental practice, which is the largest practice of its type in the world. That brings us up to current and our involvement with the state and to bring resources to everyone throughout N.D.

Neubauer indicated I am not sure how familiar you are with the remediation project in Mandan.

J.C. indicated they have done some of their homework on what is available. The city of Mandan has a wonderful website so I think we are current on the public information. Some of the last documents were Feb. 2010. We understand the issue that brought this to the forefront and so having done our homework we are rather familiar where you are today, but that doesn't mean we know the entire story.

Neubauer stated our vantage point is as we move toward how do we finalize this project and not trying to tie up all the assets of the Remediation Trust for the next 10, 15, or 20 years or whatever it would be. We are trying to find out is there an insurance product that the trust could acquire or purchase if that's what your company does-- transfer that liability to you for a premium thereby freeing up the assets of the trust to be utilized in other local areas. You probably understand as we go if the trust were to run out of money and there are still environmental issues that have to be dealt with, the state of North Dakota picks up the tab after that. I don't think the state of North Dakota is very interested in picking up that tab. Like you said what we are looking at now we hope to and anticipate there being some resources left over in the Remediation Trust account, but yet we don't want to have those tied up for the next 20 years.

J.C. responded right, in our world as consultants we bring a unique perspective from the state, but I do want to emphasize two things that are very important factors. First and foremost, AON is the world's largest insurance brokerage, so we do not actually take on any risk ourselves, but we go out to the worldwide insurance marketplace and find the most appropriate products and solutions at the best price. A.C. will talk about that in detail, but the relationship we have with the state is one where the state is our client so we are looking to protect the best interests of the state and client relationship. What we would be doing as time goes on, if requested, would be to go out in the insurance world and first help design the appropriate solution and that would be A.C. and then see if we can get that solution accepted in the insurance marketplace. I wanted to make sure that distinction is there. AON is the world's largest insurance brokerage by quite a large margin.

Neubauer asked. So you are selling that product, liability—finding a buyer for it?

J.C. continued. Finding a solution for you. A.C. maybe you could jump in. Hopefully, everyone feels comfortable to ask questions because we want this to be as informative as possible to maximize our time here.

A.C. indicated let me tell you about the point that J.C. was making here. What we would do and the reason we were approaching you today is that effectively we are solicitors of solution. The agenda for this call is to have a dialogue to understand what your needs are. J.C. and I talked about it beforehand. What we would then do is take your needs and take it out to the insurance marketplace. We would talk with 10 or 15 insurance companies and to see who would be able to best offer solution that would accomplish what you are looking to do. Specifically, what you have here realistically is maybe 4 or 5 markets. Not every insurance carrier can handle what it is you are looking to accomplish here, but there are several good insurance companies out there. They have specific dedicated units that are designed to help with these types of situations.

At any point during this entire process; I know this has been going on for years and years, was there ever any discussion relative to insurance? The reason I am asking that question is that it gives me a better barometer as to what you guys have evaluated in the past and what may or may not have worked. And if you haven't, I can start from the beginning. What kind of experience have you had with evaluating insurance with this situation?

Neubauer indicated it has been something that we have discussed since we first reached settlement with the railroad, but we have not had any conversation with anyone regarding what's out there or what's in the world. We have had brief conversations. Do we think this is a viable alternative for us? Number one we have really had nothing to speak of and at some point in time we need to start shopping to see if we can find any coverage.

A.C. reiterated. This is really a textbook scenario. You have a fairly sizable cleanup. You have an escrow of money or a pool of money of which you need to have accomplished.... There are several risks that you could face during the course of this project. Some of the risks that you could face along the way are: 1. Exhaustion of funds. You have come to some sort of negotiation with the railroad. You came up with an amount that should be put in escrow. In the best case scenario the amount that has been placed in escrow should satisfy and be able to address everything that needs to be remediated within those funds. What if you exhaust your funds? There are certain insurance products available for that. That is Part I.

Part II is what if you find new issues during the course of the remediation? So let's just say you have done all your characterizations; done all your engineering. You have determined your remediation objectives have three parts to it: groundwater remediation; soil remediation; O&M meaning operational maintenance of any sort of remedial activity. If, during the course of that process what if you find new constituents or new issues that pop up. Now, you will have to address those as well, too. Once again insurance could be used in that type of situation. From the information, I have seen available on this remediation, which shows me where we stand with regards to the amount of money expended for the remediation it looks like in the future expected costs. It seems like the opportunity here is really a combination of both looking at what's available to protect you guys from the event new issues are found during the completion of this remediation project. And the second part which may be little bit more of a challenge to the financial side of it, which have we allocated enough money into the escrow fund to make sure that we have enough funds to withstand any sort of changes to the remediation objectives here. I think there are some solutions that are available that should be taken into consideration more of what the city of Mandan would like to look at on behalf of its residents. The point of this call here is really to dialogue off these two concepts to see where we have the biggest concerns, but if we have a productive call here I think the next step really would be then to go to the next level of discussion and come back to you with some opportunities where we could use an insurance solution to help. Do those two points make sense? Are we on the same page on terms of understanding what your needs are?

Schwindt indicated he was not sure he agrees with those two points. The settlement was for roughly \$24 million. We have a little over \$8 million left. Our O&M is running \$250,000 to \$300,000 a year. We don't know for sure but it looks like we have to operate the system for another three to five years so you are talking a couple of million dollars of O&M expenses. I am not so concerned about running out of funds at this point in time. What I would be more interested in is perhaps some kind of insurance policy like Neubauer said initially is to pick up any kind of unforeseen contamination that may exist at some time in the future rather than keeping all the funds in escrow and keeping the trust in business. Is there a way to once we have determined that the site is clean and the Health Department has determined the site is clean, is there a way to set up a fund through the insurance or do we just simply put cash aside within the trust to address those future contamination incidents if there are any? That's primarily what I

would be interested in discussing with you. I don't know if the other two trustees have any idea.

A.C. continued. That is the third part of concern, which is after remediation is complete to make sure we have protection in the future. For that it is a lot easier than the first two objectives. That being said, if the concern is we are wrapping up with the remediation. We are concerned about the future. Depending where we stand with regards to release of liability from the state regulators we can certainly go out to the marketplace and obtain that type of insurance. That will help once we are able to secure that type of insurance product. It will help achieve the goal of being able to release money from the escrow because what you can do is transfer that risk to the insurance policy. There are lots of nice features that you can get built into an insurance policy. You can get transfer of risk for any future bodily injury due to a pollution condition, any risk of the property damage, or any future cleanup of resident pollution conditions whether it is known or unknown. So you can get all that risk transferred into an insurance product. You have large limits available out in the marketplace. You can get \$20 - \$25 million worth a limit so that way it protects you in the event if there is any additional issues that pop up from this particular situation. So in terms of what the premium would be for something like that. It could be designed for \$20 million or \$25 million. You can get an insurance program that goes out 5 years or 10 years out and we would be satisfied with the one-time prepaid premium. What you can then do is purchase the insurance policy, set up enough money for whatever deductible you may have structured within your program. There are no insurance policies out there with zero dollar deductible or a zero retention letter so that should be one reality of the insurance program. Once you pay the premium and have...payment of the deductible I think you can achieve what you are trying to do there, which is transfer all the future liability to an insurance policy and be ready to release the funds from....

Schwindt indicated from my perspective that's primarily what we would be interested in. Glatt agreed.

Glatt indicated the main issue is the way the law is written up and the agreement is written down. If that cleanup is done, the state could potentially be on the hook for any future issues that would come up. We were looking for a way to take the state off the hook after remediation is done.

A.C. indicated they actually have what they call a "reopener clause." So let's just say you got your release from the state agency and they have issued you one of your conditional letters—conditional no further action letters or whatever sort of release they may issue. You can have it written into the insurance policy that if the state agency changes their mind or reopens what you believe to be a closed issue you can get coverage so that it triggers or responds to that situation whether it is bodily injury, property damage or a cleanup issue. The point is that we can certainly fill out that trigger of coverage into any sort of program.

Schwindt indicated we could look at the bodily injury and property damage kind of things, but I would think the primary exposure would be any future cleanup if something shows up.

A.C. thinks in the insurance world all three of those components of risk of bodily injury, property damage and cleanup are tied together. If we find that we would be better off removing the bodily injury and property damage component of the coverage we can certainly do that. If we move forward with this, I think the best approach would be to look at something that is comprehensive because that interest of savings by removing those triggers of coverage would be tough to do. It is one of those things—like I said I think the best approach would be to look at a comprehensive approach to transfer the risk and pare things back as we decide we don't need that in coverage. If we are on the same page as to what the needs are, maybe let's take the discussion to the next level there. I'll stop and see if there are any questions.

Being none, A.C. continued. Then what will happen here is the underwriting process. Let's just say the direction from your committee to J.C. and me is that O.K. you know what I think you have made some interesting points here. What can we look at what it would cost for some insurance and what kind of programs could you obtain? What we would then do is take environmental data, engineering reports or whatever is available on the website. I did look at the website and did eventually find a reservoir of environmental data. I think there are some summary reports, some summary documents available. But to go to the underwriters I think what we would need at that point is some engineering information and take that out to the underwriters so the underwriters can assess the risk and perform their underwriting due diligence which is we will look at what the original contamination was, look at what remedial measures were taken, and look at what the current status of the project is. Based on that information, underwriters would then be able to put out in...that summarizes terms and conditions and then offer up their pricing as to what they would charge for the transfer of that risk. Like I said, you are at a unique time in the marketplace where the cost of insurance is really low. What I mean by that is pricing for a healthy set of limits might be \$20 million to \$25 million is that at pricing levels that you wouldn't necessarily see in a different marketplace if the patch d was more of an issue so from that standpoint. The premiums are prepaid and they take you out for a long period of time whether it is 3 years, 5 years or even 10 years. I think we should be able to get that. I think this is a very favorable time to look at that as an option.

J.C. noted A.C. is saying insurance is cheap right now for this kind of a thing, correct? A.C. responded. That's exactly what I am saying.

Schwindt. Does it make sense to purchase insurance right now though? I'm wondering about the timing on it because we are still actively cleaning things up and we will probably be doing that for the next three to five years. Does it make sense to try to buy insurance now or should we be waiting until we are getting closer to getting that regulatory clearance from the Health Department?

A.C. continued. So let me answer it this way. Who knows what the markets will be in 3 to 5 years. What are the things that are facilitating as J.C. said a cheap insurance marketplace? It is the fact that there are quite a few insurance companies out there in the marketplace and not very good on capacity. If you just look at a very typical, economic supply and demand curve. When there is plenty of supply and not enough demand obviously that puts the pressure on price. That's kind of the marketplace we are in right now. There is plenty of what they call limit capacity. In 3 to 5 years, let's just say that insurance is reciprocal and for most part it is. The 3 to 5 years you may not have the same pricing market or environment that you have today.

To address the concern that you raise which is: Should we be looking at it now or should we look at it once remediation is complete? There is actually a way you can structure the insurance rate. You can buy the insurance today. What the insurance would then do is provide coverage for any of the unknown issues. We have a very good handle what is known at the site, but what we don't know is the unknowns. You can buy an insurance policy that has coverage for all the unknowns. What that means is that if you discover additional contamination plumes or new contamination plumes all those would be covered. But what we could do is structure the policy so that coverage for the unknowns can be provided. Coverage for the known issues that is that reopener coverage we talked about. The coverage for the known issues can be added into the policy once those remediation points are complete. Okay. Typically, there is no additional charge for that. So you would have your site insured today. Your remediation would be completed 2012—2013 when you've achieved your remediation objective or no further action, those no further action letters. And upon receipt of those letters, we can tender those over to the insurance companies and if they are in agreement with it, they can remove any exclusion for the known issues that they would have put into the policy as a known issue here in 2010. Does that make sense?

Neubauer indicated he was not an expert on the insurance industry, obviously, but it just seems odd that someone would buy a policy when they are not sure when the regulator is going to give a clean bill of health to the site. You guys know more about that than I do.

A.C. indicated let me explain it. This is one of many different ways that insurance can be used. To answer your question, let me give you a different example. Let's just say you were doing a property transfer. I am the owner of a property that is contaminated and I am selling it to a buyer that is interested in the property but has some concerns or reservations about the contamination factor. I as the seller can tell the buyer I am going to get you an insurance policy that we know the property is contaminated. I as the seller will take care of that contamination. The buyer says that is fine and dandy, but what about any unknown issues too? An analogy -- you can use insurance in that type of situation coverage for the unknown issues and have coverage for the known issues; add it into the insurance policy when I as the seller complete the remediation. What that does for the buyer is it gives them comfort that they are buying property that is no longer relying upon my indemnity, but has an insurance program backstopping with a risk they would face as a new buyer of the site.

J.C. asked A.C. In the continued construction--redevelopment of the city is this something that would help if they were to purchase today rather than later for any future buyers—pending buyers of some of this property. Would a policy like this add an additional level of comfort for somebody looking to redevelop property?

A.C. noted it was a good point. I saw that part of the plan here is to redevelop this property, is that correct?

Schwindt responded. Most of the property that the city owns has been redeveloped. There is one plot that still remains to be done, but most of the site is in private ownership. There is very little public ownership that the city is looking to develop any further.

A.C. responded. Okay, the point still would remain the same in terms or course of development of the site if you were to come across any additional environmental issues the environmental policy would be there to backstop those concerns that you would come across as far as the development. J.C.'s point is environmental insurance can be used in construction with a development plan to protect all interested parties, but if the event where development has been completed it really serves as a backstop to any issues that may arise subsequently to the development of the property.

Neubauer indicated if I am hearing you right it may assist if I have a private property downtown and the owner wants to sell it to someone else. If we have a policy on that site, it may help that transaction.

A.C. agreed it actually could. I am actually looking at a map as of the subject type. This is off the information. It is bounded by Main Street to the south and 2nd Street on the North...and Collins Avenue comes in perpendicular to it.

A.C. That is exactly the point here. What we would do is we would schedule onto the policy of the insured location the full boundary of what is the subject of this remediation. If it is scheduled as an insured property and gives rise to future issues, the insurance policy would trigger responsive issues. If a private owner wanted to handle – come in and develop a section of that insured property, we could actually add it to the policy of an additional insured as well, too. There are a lot of utilities within environmental insurance policies. This is like a textbook situation where you would use an insurance policy where you have a large site cleanup and you want to take the unknowns out of it. In this particular case where remediation is...well and you are looking to the future, you can structure the policy to really complement those objectives.

One point of clarification, Schwindt explained the trust is not responsible for any and all contamination on property within the cleanup area. All we are responsible for is the cleanup of the diesel fuel so if there is something else from heavy metals or PCBs or whatever else might be out there that is not our responsibility.

Would that be the responsibility of BNSF? A.C. asked.

Schwindt responded it would be the responsibility of whoever placed the contamination there if that can be determined.

J.C. explained. One of the questions—this is always one of those uncertainties, if those were latent in the ground and let's say, for example, more of an abstract example. Let's say we have a deposit of asbestos that was put there 75 years ago. In the process of the remediation, that is released and somebody files suit. Where do you think that suit would be filed because some parties would say hey, it was in the ground and it was encased? Gee, oops we made a mistake and released viable asbestos. Would that litigation go against I am not saying who the ultimate settlement would be with, but if I am a litigator and A.C. is an attorney as well. If I am a litigator, I am going to look at who is in charge of this. Well MRT might be a responsible party. Whoever else that put those in the ground would be a responsible party, but I am going to file against the state and probably file against BNSF because they started this whole chain of events. This is where we have seen situations percolate up that starts to become quite messy in the process.

A.C. noted this plays off the point that J.C. is making here. An environmental policy responds on a liability basis, not a negligence basis. What that means is in a situation. I understand that MRT is really focused on the diesel cleanup but if there are other constituents that do come up that J.C. was suggesting was a possible scenario where the MRT gets brought into a suit. The policy pays for defense right out of the back. It pays for the defense and then if there is any sort of liabilities that attaches to the MRT the policy would respond to that as well too. It is not a negligent based policy. What that means is that if a court of law holds you responsible for it, even if the situation is you may have not originated that...condition. Then what happens is that the policy would still respond. What you would do is use the policy just to really add as a backstopper or parachute to protect against any of these variables that exist. I understand the way the liability seems to be formed specifically in response to the diesel fuel cleanup, but there are so many different examples of variables that can happen here. Like J.C. said there could be a deposit of asbestos in the soils below the ground and some future incident somebody may say we need to clean that up. The question becomes who do we go after? The policy doesn't tie into specific remediation objectives meaning it doesn't say we will only respond if we have contamination of XYZ nature there response to any pollution conditions. And it actually has a broad definition of pollution conditions. It is defined as any pollutant that is released into the environment that is not normally present in its surrounding. From that standpoint, it has a pretty broad definition of what is a pollution condition.

Schwindt indicated so these are all just coverage options that we could be looking at.

J.C. responded. Actually it is a little bit nicer than that. Off the shelf a lot of these pollution policies are pretty broad to begin with. Okay, it is not like I'm working from a

white slate and working towards your objective. In some of these cases, you are working with a pretty broad pollution policy and you're adding to it or taking away from a custom built product. As opposed by a general liability policy, if you go out to obtain a liability policy. Those are pretty straight forward. That's because it has a very straight forward insuring agreement...because we pay for your issues that you are liable for. A pollution policy pays for those three tiers that we talked about: bodily, property damage and cleanup. The three of those things go hand in hand reinforcing a point I made earlier. The point is pollution policies are designed to be custom tailored to particular needs here. We can get development costs covered as well too. I understand the point you have made is a lot of this property has already been developed. When we get to that hypothetical that I shared with you where I am a seller of contaminated property and the buyer of property once I buy it and maybe develop something out of there. Some of that development would be impaired by a pollution condition. You can actually get an insurance policy to pay for "soft costs" associated with that business interruption. Extra expense due to advertising, taxes and insurance, interest payments you could get coverage for that so that it is not payments for loss directly tied up to...or cleanup but it is the extra expense associated with a pollution condition and coverage for it. So I am just reiterating the fact that there is a broad array of coverage available. I think the question was asked you pick and choose what you do here. My response is you have a pretty broad insuring agreement to work with. It's kind of like the work of an artist. You build the coverage to custom tailor what your particular needs are.

J.C. indicated what we really wanted to achieve today was to introduce you to some of the environmental insurance concepts, the fact that there may be protection out there. As you have already learned, it could take a myriad of different forms and that's one of the things where we step in and help you in our particular case. This is going to have to be a conversation that will have to be ongoing. And certainly we are not trying to promote anything today. We try to bring solutions. This came from the conversation with Tag as to what are we going to do in the future. Maybe it would be good to have an introductory call and at least start talking about potential options, but we recognize this is going to be something over time. So I guess one of the questions I've got is if I were to follow-up with anyone outside of Tag in order to provide some follow-up information from what A.C. has had to say and so forth, who would be the best conduit for that? Maggie (Olson) you and I have e-mailed back and forth only to establish the call. Who would be my best conduit in order to distribute information to the committee?

Neubauer asked. Are you looking for technical? J.C. indicated no, to talk about where we might go from here. It might be best to work through Glatt for the technical stuff for Radig and Glatt to understand and to Olson to say I think this will be a viable product would be the best.

J.C. noted if I follow-up, it will be with Tag, Olson and you, Glatt and Radig just kind of as a group and continue to have the conversations going. I think the big question that was presented also that is really important and there is truly no answer to it. How do we know the right time to buy? We may have 3 to 5 years more remediation. That I think goes right to the heart of you know: What is the right time?

And the next question is: How much is enough if we did insure it? Those are good questions that really at some point in time take a little bit of a roll of the dice. I guess I only have one other question. One of the key features is to be able to take the money that would be left over in escrow and put that in other uses. Is that money in the Settlement Agreement kind of earmarked? Can the state simply pop that back into a General Fund or is it the Department of Health? How would that flow? Does it go partially to the city of Mandan and others?

Neubauer explained there are two trusts that were created. The Mandan Remediation Trust which contained \$24 million for the cleanup. There is a Mandan Supplemental Environmental Projects Trust which is under the city of Mandan. The \$24 million trust would be leftover funds that are remaining once remediation is complete and all that would be transferred over to the Supplemental Environmental Projects Trust. But like you said the issue that we have is when is remediation complete and defined done and all that good stuff. If there comes to an amount that everyone is comfortable with, if it is an insurance product or self-insured we have enough money here now we can transfer over \$8 million to the SEPT and keep \$.5 million in the big trust. That would make everyone happy except Glatt and the state. That's how that flows.

J.C. responded good, that is helpful enough. Maggie you have my e-mail and I will forward follow-up information to everyone. Maybe see some things in print to clarify some of the discussions. Again, we wanted to try to introduce some concepts and tell you there are solutions out there that may work for you. Whether you choose to go that direction or not, certainly is entirely up to all of you. There may be options out there that we can show you that would help get you in a better position than you may be.

A.C. expressed his appreciation for the discussion. Second, this is really a textbook situation. If you want to understand the use of insurance of how you would use it, whether it is end of remedial concerns of transferring a risk, or forced remediation. The point that you should take away from this discussion is that I think there are some things that bare additional discussion. There isn't really any decisions you need to make today other than a decision to say well there are some stuff that may make sense here and we should consider it. From that standpoint, J.C. will follow-up with you and discuss with you what direction you would like to go. But like I said during the course of this discussion hearing what you have to say, the meeting was publicly available. I think there would be a lot of reason to dialogue. I will just leave it at that.

Neubauer responded if this is a textbook situation do you have a textbook ballpark figure that we are looking at?

A.C. indicated I think I can give you a ballpark figure. It would not be necessarily primitive to give you a number at this time because I don't have all the information. I would need to give you a meaningful number, but if you want a high level just an understanding of what this potentially would be looking at I can give you a number but this is not necessarily nothing to hold me to because there is a lot more information that

we need to drill through and get a better understanding of. But based on the concerns that I see here, let's just say you put into place a \$20 million program—a \$20 million insurance policy. That just means that they could fund or absorb any future cleanup. So a \$20 million program—let's just say you took a very low attachment point, which I would recommend because you guys are not a corporation per se where you can manage by cash flow. You are really doing this to transfer risk because you really want a low attachment point. I don't know where a market would feel comfortable with this maybe \$25,000 or a \$100,000 attachment point. They may even be higher I don't know but let's stick with that \$20 million number.

The next factor would be the term. Depending on how we structure it, we could get a five-year term or we could get a 10-year term. My structure would probably contemplate a 10-year term because there are no new conditions that we would necessarily be concerned about in terms of generation of new conditions meaning there are no longer any sources of diesel fuel contributing or causing any pollution conditions. But if you want to look at a 10-year program for a \$20 million limit, I would say it is going to be \$1 million or \$2 million and that is really on the conservative or high side. That is just so you have an idea of what you potentially could look at, but the thing is you would be transferring that risk of \$20 million for...rate online. It is called rate online. The rate online you would probably expect 5 percent or 10 percent of the limit of the \$1 million or \$2 million number.

J.C. indicated my experience over in South Dakota where I have a large project at the Homestake Gold Mine we have done an environmental program over there. I would say that is very conservative given the insurance rates right now.

A.C. noted I would rather not come in low and go through this project and find out other factors that would have driven that number high. I really think those are high watermarks and we realistically would come in lower.

Neubauer asked. Are there some other examples that we could do some homework on our own? This is how we would anticipate this program working.

J.C. thought A.C. could probably come up with a list of past projects.

A.C. indicated no, we do a tremendous amount of work with large corporates but I don't know if that is going to be exactly analogous. We might have some examples of other governmental entities by that I'm talking maybe like military base closures. We have had similar closures where a military base in terms of closing itself down and transferring it to governmental agencies who have had to go through a similar process where they handled the remediation that tendered the property over to the public for development. So I have those types of references available as well. So I think what we would like to do is query—we have a large environmental practice. If you query the other members of the team we will be able to come up with a pretty solid list of public examples. In the meantime, we will look at some light papers and bits of information that we can get over to you as well.

Neubauer indicated I think one thing that is important is when we structure the settlement with the railroad; obviously, we still have a working railroad right downtown. If there is another environmental release or contamination event that all bets are off and the state and the city will sue BN again. So I don't know if that helps transferring for the unknowns and what is known to say so what happens if they have a major spill again.

A.C. responded. Let me address that point. So let's just play that out. So let's just say you get an insurance policy. Remember the point I was making it doesn't necessarily distinguish between pollution conditions you create or created by others that affect your property. You can use an insurance policy and use their funds to pay for the immediate needs of their...and let the insurance company subrogate back against the responsible parties. So in that scenario, I think it is nice that you have the ability to go back after the rail yard for their issues, but I am just throwing that out there. One way this insurance is an ally is that the insurance can pay for the loss and subrogate back against the responsible party.

Neubauer asked when you talk about low attachment point I'm assuming in non insurance terms that is your deductible.

A.C. noted yes, it is your deductible. There are three terms: attachment; retention; and deductible that are used almost interchangeably. If you have \$100,000 deductible it is the same as a \$100,000 attachment which is when the insurance begins or \$100,000 retention, which is how much risk you are retaining. It goes back to how much should we keep in the escrow.

Neubauer thanked them.

J.C. indicated he is over to Bismarck frequently. Hopefully, next time I will make arrangements and maybe get a chance to say hello in person. Neubauer agreed if you are in town a face to face would be good with all the players at the table. We are reasonably flexible. Give us some advanced time and we could schedule a meeting.

J.C. said A.C. is out of Chicago. He can bring the jet up here and head over there pretty easily. Thanks everyone.

Schwindt indicated those numbers are in line with what I was thinking.

Glatt reiterated a \$20 million policy for...; \$100,000 deductible that is still doable.

Schwindt is not convinced that now is the time to do this though. I understand what he is saying, but if you are looking at a 10-year insurance period why would you start it now when you know that you are going to be actively involved with it.

Glatt noted unless you can buy it now and it won't be effective until the Department signs off on it.

Neubauer indicated or you buy it now and the Department includes decommissioning too. Don't know if that is a possibility.

Radig – Ten years is kind of on the low side I think when you think about groundwater cycles.

Olson – That's 10 and you wouldn't start that part for 3 to 5 years.

Radig – If the 10 starts when everything shuts down.

Olson – Ten years of what is the knowns?

Glatt – Ten years is there anything saying that at the end of the 10 years if you wanted to go another 10 years. At that point your policy would be less costly.

Radig doubts it.

Neubauer stated you have history back to 1985. So you would assume that your water cycles have been by the time we get out here if we start in 2012 or 2014 they're your 30-year or 40-year history. I can't imagine that there are a lot of unknowns in there.

Schwindt noted maybe that's what Radig is driving at that is if we continue in a wet cycle here, we could continue operating the system another 6 or 8 years because of the high water table.

Radig indicated because of a high water table plus you are also increasing the risk for a protrusion in basements or whatever.

Glatt thinks when you are a year away from closure or close to it you can start talking about purchasing a policy. We will have a better handle on where we will be at with remediation.

Schwindt indicated when the groundwater comes up and we end up shutting the system down for three years because we can't recover because the water table is up.

Neubauer added that might be an insurable event. I would be interested in moving this process forward if the water table is an insurable event and we're not extending the cost of operating the system. If that is something that is worked into that premium depending on what it is.

Glatt indicated you can look at that. One of the issues I would have from the date the Health Department sends a letter, I would like to have a minimum of 10 years after that date. If we bought something now, we may only have 5 years after that.

Radig explained that the law itself doesn't address a length of time.

Olson indicated that was one of the issues that Tag had brought up.

Glatt the next legislative session it might be different.

Schwindt indicated he liked the point he brought out at the very end and that is to buy insurance that would protect the state from future liability and future enforcement costs so to speak if something happens on a rail yard or where you start getting migration you know you take that whole fight away so to speak out of the requirement that the state pay for the enforcement action. That was kind of interesting.

Neubauer indicated it would be good to start conversations with them. I share some concern about if we sit here for another two or three years and go out to market and try and buy insurance. What they are saying right now is you can buy a policy now and pricing is very good. Obviously, they have some history working in our state with Risk Management. If the state is comfortable with what they are getting from these folks, if insurance is cheap to buy now—sooner rather than later.

Schwindt indicated he talked about what the fee would be in passing but never came back to it to go through this process. If we go through an extended process and get to the point and here is what it is going to be. How much is that fee going to be that we would end up paying for?

Radig asked. Is there a fee for doing the planning or strictly commission based?

Neubauer noted that if you have a \$100,000 policy these folks peel off 10 or 20 percent of that policy. That's how they get paid.

Radig stated it could be more like a financial planner that actually charges a fee.

Olson will talk to Tag and see. You (Schwindt) had asked some questions about the MRT's only responsible for this diesel cleanup and concerns about whether we need personal injury or property. I think they were making the point no you would want the policy to cover not just the things that we know that we are responsible for but we have claims by other people trying to get us responsible for things that we don't think are responsible. Like inhaling vapors in a basement, personal injury or claims that people would want to let the state or MRT on. Cover those legal fees and maybe they would end up going away and you would end up having to settle out with them. Then we would have insurance to settle out with that.

Schwindt didn't want to leave them with the understanding that we were responsible for anything there. Something like Vicky's Bar where there was settlement. There's nothing to preclude them from filing suit against us because we caused settlement.

Glatt noted issues have shown up.

Schwindt noted when they go through the underwriting process, they should understand that.

Radig indicated LBG will have to put together a summary or document of all the data, all the investigation that has been done and they have done. The site conditions as they were at the beginning of the project and what they are now and show progress, and all that.

Glatt indicated there are a number of monitoring wells below, nothing is absolute. Probably know the site more than anything else, if there is contamination.

Radig added anything else in N.D. anyway.

Schwindt didn't know if a summary from LBG would be satisfactory. The underwriters may want the raw data or summary or whatever.

Radig noted they hire their own consultants to review everything.

Neubauer asked. Did LBG say they were their insurers also? Glatt responded. When they started out with the proposal.

Schwindt noted that in the last year they had provided a name and a contact for an actual insurance company or another broker.

Radig indicated that was somebody that specialized in redevelopment.

Schwindt thought it was more an insurance company. It was a good conversation. They gave me some good ideas.

Glatt would like to see what this company comes up with. Air bases are a good example of a lot of contaminants out there.

Olson noted that Tag's big concern is with that provision in the law. Is that something the Health Department would be willing to provide a provision in the law?

Radig indicated it is in the Hazardous Waste law.

Glatt added. Looking to put time limit on the liability.

Radig noted otherwise be liable forever-- indefinitely.

Schwindt didn't know whether any kind of change in legislation would affect this settlement.

Radig added it wouldn't affect the settlement but it would affect how it works out.

Olson indicated Tag was talking about how long you are required to have financial assurance after the project is done with. He was concerned that the way the law was worded he felt that it was an indefinite type of deal.

Glatt indicated it doesn't only impact the Health Department. It is anybody that we give liability relief from or the seller has to keep some kind of escrow.

Olson thinks any of those that are over \$.5 million.

Neubauer indicated when this site gets to the end and gets a clean bill of health and you're saying if there is an issue that comes up five years from that point in time somebody from the state.

Glatt noted in this case where there is no money left for discussion about leaving money in the trust that's why we are reluctant to let anyone go because they could come after the state.

Olson says that the state--we were required to make MRT or any other group--we didn't make you keep the financial assurance that we were supposed to make you keep forever according to law. That's something we will have to think about.

Neubauer asked. So at what point do you remove that potential responsible party? At what point can a property owner buy property and not have the ability to go back and you don't ever have that ability? What time issue would not have the...to go after the state of North Dakota for something they found on the site?

Schwindt isn't sure there is any limit.

Radig interjected. That's two different questions I think. This is only talking about under a case where you are giving a liability release where you have to have some sort of escrow account or financial assurance held by the responsible party for a period of time. And how long does that—it doesn't apply to any contamination site.

Neubauer asked. What about the West Fargo cleaners or whatever that was?

Radig indicated they have never been given a liability release.

Glatt indicated as a condition of us settling with BN issues and saying BN you are no longer on the hook for this chunk of contamination with the state with the settlement. We have to be reasonably sure the settlement will take care of all these issues. We don't want somebody to come back.

Neubauer noted we want a clean bill of health.

Glatt doesn't know if the Risk Management people as long as there is that question mark out there how the state could ever sign off whatever the balance is.

Neubauer indicated but until you get that end point defined I can't imagine ever saying take \$5 million of trust and put it in the SEPT and go from there.

Glatt stated what we do know if the water level reaches a certain elevation that we have problems in the LEC. I think they have taken care of the problems. Also, the cleanup of soil and groundwater and...in the past. I don't see us having a whole lot of issues that we haven't seen other than there haven't been many other issues.

Neubauer indicated but realistically at the end of the day at what point even if we say okay 2010 the site is clean. I am going to buy an insurance policy that covers until 2020. When is the state of North Dakota going to say OK to shut down the MRT bank account?

Glatt stated what you would like to do at 2010 is buy insurance for 10 years. You would like to close down say for \$100,000—the city of Mandan.

Neubauer indicated I put my city hat on but I'm also looking at the state side. Are they ever able to say the trust is now done? The state is now done? If the state is never going to be done of having that liability then the state is never really going to save any of that money because you are not going to buy a 100 year policy.

Glatt indicated they come down to this management business and say 10 years after remediation...will the state have a comfort level. It is not zero risk. Maybe Risk Management makes that call. The Health Department's due diligence we think we have everything based on monitoring data. There are no absolutes but we think we have everything.

Olson added this is why we start talking with Tag about this.

Schwindt suggested that it should probably be the negotiations with the Risk Management agency. Before we would ever buy any insurance, what does it get us? Are you then going to allow us to free up some of the money and get out of this business or do we have to be in business forever? Some of the negotiations with the Risk Management folks are appropriate.

Glatt asked. Do they want to change the law? He suggests starting conversations now.

Neubauer indicated if I put my city hat on from a city standpoint we have former commissioners who are out their saying that we should have seen some of the money yesterday and current commissioners who are asking questions. We are looking into it and we may be able to start thinking about 5 years from now.

Glatt stated it may come to an agreement that the state has with the city saying that you will end with some of these liabilities too. It's not solely the state but the city be hand in hand with the state. If it's truly trying to get money out of the trust, the state is going to be in a position to be on the hook forever. We are going to be concerned about letting any money go at the city's end of it. The risk is gone state. You said it was OK. So let's go.

Neubauer explained we know this isn't going to happen, so we can plan for that. If we get to a point and say the state's got liability forever I don't know if we will ever be able to release any of that money. At least that is enough and we can say it is not possible; we are done with that conversation. Here is why or it is possible and here is the time frame. Some of these events have to occur. It's just a matter of planning.

Glatt noted just from a technical standpoint, I think we can make a pretty good case. We are not going to see a lot of issues based on current land use and ordinances from a lawyer standpoint. It may take us a couple of years to do that.

Collins and Main. Huber indicated I had wanted to bring up if you could have some discussion anticipating that the city could likely be in a position of re-offering those parcels on Collins and Main to the public in 2011. Also, whether or not that potential offering if the remediation equipment that is within the bounds of those parcels would need to remain in place or whether we would be able to advertise it such that if they needed to disturb it for the project if it could be removed, decommissioned, etc.?

Schwindt indicated that the assessment that we got from LBG before was the wells within the interior of the lot would probably be removable. Perhaps that one on the very north end could be moved a little bit further to the north and taken out of any kind of building footprint. The ones in the sidewalk around the edge, I think we would have to maintain those because there is still some free product still showing up in some of those. I think the ones interior to the lot should be removable.

Neubauer noted that we will have to make that call come November/December.

Glatt noted we will still look at it in six months.

Huber explained. What I wanted to do is put it on your radar screen. We might need to have you take some formal action on that item in November or December so if we have an issue a request for qualifications or proposals after the first of the year we know what we can formally say about the property with respect to the remediation knowing that you are going to have a response period of time, a development period of time. Glatt's perspective is we are flexible enough to accommodate any building that would go on there.

Neubauer added as a RFP and an issuer of a request you would want to be able to say it's fine to say we are flexible but that doesn't give me someone who is looking at it a certainty of what you are going to tell me to do. If we can come in and say with

reasonable assurances that the wells on the exterior of the perimeter of the property will remain and the ones on the interior will be removed. I think that's what we would be looking for. As we are looking at it then you tell me that then I can make a plan and proposal.

Glatt indicated depending on what we propose; we may have an opportunity to keep some of those interior wells.

Schwindt asked. Didn't we get some correspondence from LBG back when we first started this?

Huber noted because so much time has passed and the system has been able to continue to operate. Perhaps we might get at a point that we might say with certainty that they can be, not just could be. In other words, how much certainty can we write into that request for proposals or qualifications. The more certainty and more definition we could give to that would be advantageous.

Schwindt suggested looking at LBG's letter and the monitoring that has been done subsequent to that.

Huber indicated that's why I bring it up now because I wanted to see if you need to start anything in motion to be able to look at that in more detail in November or December.

Radig indicated we don't have any current data on those we get. I can ask Rusty Krikava to check them out too between now....

Neubauer and Schwindt looked at the last map. The Mandan remediation site was still shown. It may have been August 2010.

Glatt noted depending when the data was collected.

Huber. When will LBG be in to do their annual report on the remediation or will there be one for 2010?

Glatt noted that was talked about at the last meeting. They will have a report but they don't necessarily have to come out.

Huber was wondering when the information would be available in terms of putting together a city progress report, if I could expect to receive that by December 1. Having it by January 1 would be beneficial. Last year we were well past that.

Neubauer suggested if it is a nice clean cut off say up through December 31, 2010.

Neubauer asked. Where is the Health Department with the site closure strategy that we did last February?

Radig indicated we didn't get a single comment other than a few questions at the public meetings.

Neubauer asked. What is the next step to finalize that?

Glatt responded finalizing this particular draft at this point in time.

Neubauer indicated if I were an insurer, it would be something nice that I could say as close to being done as it is. It's not in the commenting stage anymore.

Schwindt noted the goal would be to get that finalized by the end of the year.

Glatt indicated it might be good to give the information to the city the year-end report and closure strategy to the city commission stating this is where we are at today.

Neubauer just asked because he wasn't sure what other process from a Health Department standpoint that has to be done.

Radig indicated that is pretty much it. I will go back and read it again.

Glatt noted let's try to have that done by the end of the year.

LEC. Schwindt reported I did go over to the LEC last week and it appears that all the work is done. I did not talk to anybody. I just walked around downstairs. There wasn't any construction activity. All the flooring seems like it is done. I don't think we've gotten anything more from the county as far as total cost that they have incurred.

Other. Schwindt tried calling Rusty Krikava this morning to find out what the status of everything is. There was no answer.

Tuck Pointing – The Medicine Shoppe. It appears that they are doing tuck pointing.

Hedahl's Property. Was there a design for the Hedahl's property? Neubauer thought there was a five-year agreement (4 years remaining) with Kevin Ritterman for a parking ramp.

Former Movie Gallery. The property across from Main Street or former pizza establishment to the east Huber indicated at this point we haven't offered it. The last time we offered it as RFP was in 2007 or 2008. I don't think we will offer it again in November. We would want to wait. One: Mayor Helbling hasn't had an appetite to sell that property. There would be more interest in it if the property could be made available for sale than just a land lease. Secondly, if the remediation would progress more in that

area to where when something is built there you might have the opportunity to not have wells in the footprint of the building. There would be more of an appetite for it. At this point there are some vacancies on Main Street with off street parking and so it's not like you can say there's nothing available of a comparable nature. Or if somebody came with a proposal saying that we would lease the former Movie Gallery space if we could add onto this building. That would give us a reason to do that.

Motion to Adjourn. Glatt moved to adjourn; second by Schwindt. All ayes.
Motion carried.