

Pay/Trial is expected to last about 3 months

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But when it is done, residents of Northeastern Wisconsin likely will have an answer to a question that has haunted the region for a generation: Who is responsible for poisoning the Fox River?

In a case that is 50 years in the making, U.S. District Judge William Griesbach is preparing Jan. 4 to call to order a trial aimed at apportioning the cost of cleaning up PCB contamination in the Fox River.

The massive project is projected to cost \$700 million, although many observers believe it will surpass \$1 billion.

Two companies implicated by the Environmental Protection Agency for the contamination — Appleton Papers Inc. and NCR Corp. — filed suit last year in an effort to diffuse the cleanup costs.

Among the more than 20 defendants are other companies that discharged industrial waste into the Fox River, operators of wastewater treatment plants in the area, and several local government entities, including the cities of Green Bay and Appleton.

The trial is expected to last three months.

Among environmentalists and others watching the case closely, hopes are running high that it will result in a sweeping verdict and close the books on a painful chapter in local history.

"Somebody's got to sort this all out," environmental activist Rebecca Katers said. "Let's just get it done."

The case stems from PCB contamination that began in the 1950s after Appleton Papers and NCR began pro-

Who's who

■ Identified by government as potentially responsible parties:

Appleton Papers Inc., NCR Corp., P.H. Glatfelter Co., Menasha Corp., Georgia-Pacific LLC (formerly Fort James Operating Co.), WTM 1 (formerly Wisconsin Tissue Mills Inc.), CBC Coating Inc. (formerly Riverside Paper Corp.), U.S. Paper Mills Corp. (formerly Sonoco Products Co.).

■ Filed federal suit to apportion costs: Appleton Papers Inc., NCR Corp.

■ Other defendants in federal suit: NewPage Wisconsin System Inc., city of Appleton, city of Green Bay, Brown County, Neenah-Menasha Sewerage

Commission, Georgia-Pacific Consumer Products LP, Fort James Operating Co., Fort James Corp., Kimberly-Clark Corp., U.S. Army Corps of Engineers.

■ Defendants with pending government settlement offers:

George A. Whiting Paper Co., Green Bay Metropolitan Sewerage District, Green Bay Packaging Inc., Heart of the Valley Metropolitan Sewerage District, International Paper Co., LaFarge North America Inc., Leicht Transfer & Storage Co., Neenah Foundry Co., Procter & Gamble Paper Products Co., Union Pacific Railroad Co., Wisconsin Public Service Corp., city of De Pere.

ducing a carbonless copy paper that was coated with ink or dye.

Originally considered an advancement for the paper industry, the new product involved PCBs — polychlorinated biphenyls — which were chemicals later found to be toxic. The federal government banned the production of PCBs in 1977.

By that time, however, the Fox River was contaminated by industrial waste that had been discharged into it. Not only were Appleton Papers and NCR accused of contaminating the river, other mills throughout the region compounded the problem by using recycled carbonless paper to produce tissue and other goods.

When the EPA first proposed the river as a possible Superfund cleanup site in 1998, federal officials listed eight paper companies as culpable.

After years of negotiation over the manner and cost of a cleanup, the government in 2007 ordered the compa-

nies to begin a huge dredging effort, in which thousands of tons of PCB deposits would be removed from the river between Green Bay and Appleton. The operation began during the summer and is expected to continue for several years.

With no clear agreement on paying for the cleanup, Appleton Papers and NCR filed their suit in January 2008.

The legal brouhaha has expanded many times to include more and more defendants, some of whom regard their involvement in the case as dubious, at best.

Brown County officials, for example, contend that the county was dragged into the suit because the county operates a disposal site for routine dredging of the Fox River to maintain shipping channels.

County attorney Ian Pitz said there has never been any clear evidence to suggest that PCBs were discharged into the river from

the disposal site.

"I'm still perplexed," he said of the county's involvement in the federal case.

That same disposal site previously was operated by the city of Green Bay, which has been named as a defendant in the case, too.

Ted Warpinski, an attorney for the city, said he suspects some government entities have been brought into the case simply because they have deep pockets, with the ability to raise taxes if needed.

"People don't name defendants they know can't pay," Warpinski said.

As the case moves toward trial, the federal government has stepped in with proposed out-of-court settlements that would excuse a dozen defendants, including the city of De Pere and Green Bay's wastewater district. The settlements, which are pending before the judge, describe those defendants as minor players.

Appleton Papers and NCR are fighting the settlements, arguing that it is too early to decide who played minor roles in the contamination.

Michael Hermes, an attorney for Appleton Papers, said 20 percent or more of the PCB pollution came from sources other than the two companies known as carbonless paper innovators.

Hermes noted that Northeastern Wisconsin was filled with paper-related businesses during its heyday as the industry leader.

"Everybody profited," he said. "Everybody should pay their fair share."

To manage the colossal court fight, Griesbach has moved the trial to federal court in Milwaukee and as-

signed seats for each attorney in the courtroom. Court records show that more than 100 lawyers have been involved at one time or another.

Griesbach also ruled that the case will be heard in phases, with the first phase focused strictly on two issues: when the defendants knew that recycling carbonless paper would release PCBs, and what the defendants did, if anything, to avoid contaminating the river.

In a ruling mapping out the structure of the trial, the judge made clear his hope that the outcome of the first phase will lead to an out-of-court settlement, eliminating the need for another phase. Referring to the limited scope of the trial, he wrote, "I am satisfied, without prejudging the issue, that knowledge and fault could constitute the principal bases on which contribution may be allocated."

Some observers are laying odds that the trial will result in a fairly anticlimactic distribution of cleanup costs among Appleton Papers, NCR and the same other six corporate entities implicated by the EPA more than a decade ago.

Bruce Baker, a deputy administrator for the state Department of Natural Resources, said state and federal officials have never found strong evidence to suggest that anyone else contributed significantly to the river's contamination.

Nevertheless, Baker plans to attend at least part of the trial.

"There could be some eye-opening things," he said. "But we'll have to wait and see."