



## Legislation Text

File #: 00890, Version: 1

### Fiscal Note

This resolution provides for the expenditure of up to \$150,000 in Landfill Remediation Fees for the purpose of funding certain landfill-related legal fees and costs. Sufficient Landfill Remediation Fee funds are currently available for this purpose, and the costs may eventually be recovered as a result of future litigation. There is no appropriation required, nor is any impact upon cost controls anticipated.

### Title

Retaining Attorney Ronald Ragatz and DeWitt, Ross & Stevens, S.C. for landfill remediation work and amending the 2005 Engineering Division Operating Budget to allow for the expenditure of \$150,000 in related legal fees and costs.

### Body

#### PREAMBLE

The City of Madison operated six landfill sites for disposal of municipal and private solid waste for a number of years. Environmental problems related to the sites required the City to investigate and initiate remediation actions. Depending on what costs are included, the City's costs for remediation and continued operation at the sites are in excess of \$25 million. In addition, the City issued sewer utility revenue bonds to pay for some of the costs of remediation.

While the City had insurance policies in place for portions of the time at issue, the City never brought suit on those policies due to the Supreme Court decision in City of Edgerton v. General Casualty Company, 184 Wis. 2d. 750, 517 N.W.2d. 463 (1994). This decision, issued in 1994, explicitly held that claims were not allowed under the City's general liability policies for the type of environmental remediation costs at issue.

After the City of Edgerton decision, the City issued sewer utility revenue bonds to pay for landfill remediation costs. A charge for landfill remediation, to pay off these bonds, is included in sewer bills.

In mid-2003, the Wisconsin Supreme Court overturned the Edgerton decision in Johnson Controls, Inc. v. Employers Ins. of Wausau, 2003 WI 108, 665 N.W.2d. 257 (1993).

Since that time, the City and its outside counsel contacted the insurance companies at issue and asked them to propose to the City the amount they would pay under their policies, in light of the Supreme Court's Johnson Controls decision. None of the insurers have agreed to make any payment to the City, nor have any of them engaged in substantial settlement discussions.

Thus, it has become clear that if the City is to recover anything on these claims, it will be necessary to bring lawsuits. The proposed lawsuits would be brought against the relevant insurance companies to recover the City's costs for remediation of the landfill. Numerous legal issues surround the City's bringing these claims, including questions of statutes of limitations, the effects of the Edgerton-Johnson Controls, number of cases, questions of which policies apply for which period of time, questions of what proportion of claimed damages can be recovered from each insurer, and a question of what portion of the City's costs are correctly considered recoverable damages under the insurance policies. We anticipate that the insurers will fight the claims vigorously.

However, given the large potential recovery, the City Attorney is recommending that the City pursue the claims. The City would retain outside counsel under a "hybrid" retainer agreement. The City would commit up to \$150,000 for payment of costs and legal fees at standard hourly rates. If the cases are not settled or completed at the time those fees and costs are incurred, the City would have the option of extending an arrangement at an hourly rate, or moving to a contingent fee under which the attorneys would be entitled to receive 22% of any recovery. The City would in all events be responsible for costs (such as experts and out-of-pocket costs) other than attorneys fees.

WHEREAS, the City has a potential of recovering from a number of insurance companies related to landfill remediation and continued operation costs; and

WHEREAS, the time, effort, and costs of pursuing such claims are such that the City requires outside counsel; and  
WHEREAS, Attorney Ron Ragatz and DeWitt, Ross & Stevens, S.C., have provided the City with outside counsel on issues related to landfill remediation; and

WHEREAS, Attorney Ragatz and the firm of DeWitt, Ross & Stevens, S.C., are willing to enter into a hybrid arrangement for pursuit of these claims, as described above.

NOW, THEREFORE, BE IT RESOLVED that the City hereby agrees to retain the firm of DeWitt, Ross & Stevens, S.C., and Attorney Ron Ragatz, to pursue the claims, including litigation, against the insurance companies for landfill remediation costs; and

BE IT FURTHER RESOLVED that the 2005 Engineering Division Operating Budget is amended as follows:

GN01-54930-537100 Legal Services \$150,000

GN01-59540-573100 ID Payment from Sewer Utility (150,000)

Net Impact Upon Levy: \$0

BE IT FURTHER RESOLVED that the City Attorney shall review and execute a retainer agreement with Ron Ragatz and DeWitt, Ross & Stevens, on the terms approved by the City Attorney.