



Legislation Text

File #: 16430, **Version:** 1

Fiscal Note

The proceeds of this settlement, expected to be received sometime in 2010, will be deposited in the Landfill Remediation Fee Fund and will be used to help pay off remaining landfill debt and reduce future landfill remediation fees that are charged to property owners and paid as a component of the City's utility billing process.

Title

A Resolution Accepting a Proposed Settlement with the Sentry Insurance Company for Landfill Remediation Claims, Authorizing the Mayor and City Clerk to Sign Settlement Agreements and any Other Documents Necessary to Complete the Settlement, including Releases and Indemnifications, and Directing that Settlement Funds Be used to Reduce Future Remediation Fees.

Body

Background

The City of Madison operated a number of landfills for many years. As a result of closure of those landfills, the City has incurred, and will incur in the future, landfill remediation costs pursuant to closure orders from the Wisconsin Department of Natural Resources. The City's best estimate is that those costs, from 1992 forward, could reach as much as \$40 million.

There has been much litigation in Wisconsin over whether these costs are recoverable from insurance companies. In *City of Edgerton v. General Casualty Co*, 184 Wis. 2d 750, 517 N.W. 2d 463 (1994), the Wisconsin Supreme Court ruled that comprehensive general liability policies did not cover such costs as damages. Based upon that ruling, the City did not pursue any claims. However, in *Johnson Controls, Inc. v. Employers Insurance of Wausau*, 2003 WI 108, 264 Wis. 2d 60, 665 N.W. 2d 257 (2003), the Court reversed the *City of Edgerton* decision and found that insurance policies may provide such coverage.

By a resolution adopted May 17, 2005, RES No. 05-00459, Legislative File No. 00890, the City retained Attorney Ron Ragatz and the firm of DeWitt, Ross and Stevens to pursue any insurance claims that the City might have. That resolution authorized up to \$150,000 in attorney's fees and costs to pursue the settlement. The City has spent approximately \$73,000 of that amount to date.

The insurance policies at stake date back to the 1970s and 1980s. There are numerous legal issues both with respect to coverage and the value of the City's claims. Of the five companies who issued policies, one company is bankrupt and one company denied the City's claim long before the City determined to pursue the insurance companies, so that the statute of limitations had run.

The City has been negotiating with the three remaining companies, Sentry Insurance, Compass Insurance and Stonewall Insurance. Stonewall recently accepted the City's offer to settle the City's claims for \$3.2 million, subject to City Council approval. The resolution to approve that settlement is pending before the Common Council (Legislative File ID #16197).

The City and Sentry recently agreed to settle the claims against Sentry for \$325,000. This resolution seeks Council approval of this settlement.

In contrast to the Stonewall policies, the Sentry policies were for the first level of coverage and have a policy

limit of \$500,000. Given the legal issues involved and extensive staff time to pursue claims, the City Attorney recommends approval of the proposed settlement.

The funds for remediation have been collected as a landfill remediation charge on the City's sewer utility bills, not through the general tax levy. Thus, any recovery should be used to reduce future remediation charges on sewer bills.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, that the City of Madison approves the above-described settlement with Sentry Insurance Company in the amount of \$325,000; and

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are authorized to sign any settlement documents necessary to effectuate the settlement, including any releases or indemnifications, upon approval of those documents by the City Attorney; and

BE IT FINALLY RESOLVED, that the settlement recovery will be used to reduce future landfill remediation fees on the City's sewer bills.