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# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

FM

March 12, 2012

Erie County Legislature  
92 Franklin Street, Fourth Floor  
Buffalo, New York 14202

**Re: Payment of Civil Penalty – US Environmental Protection Agency**

Dear Honorable Members:

Under a Consent Decree signed by then-Erie County Attorney Jeremy Colby, the County is required to pay a \$275,000 civil penalty to the US Environmental Protection Agency. The federal judge overseeing this case signed the Decree on March 4<sup>th</sup> and payment is required to be made by April 4, 2012.

Please find attached a resolution authorizing and effectuating this payment for which we are requesting approval from your Honorable Body.

If your Honorable Body requires further information, please contact Public Works Commissioner John Loffredo or County Attorney Michael Siragusa. Thank you for your consideration.

Sincerely,

Mark C. Poloncarz, Esq.  
Erie County Executive

MCP/tc  
Enclosure

Cc: John Loffredo, Commissioner, Public Works  
Michael Siragusa, County Attorney

5E-13

## **MEMORANDUM**

**To:** Honorable Members of the Erie County Legislature  
**From:** Departments of Law and Public Works  
**Re:** Payment of Civil Penalty – US Environmental Protection Agency  
**Date:** March 9, 2012

### **SUMMARY**

Authorization is requested to effectuate a \$275,000 civil penalty payment to the US Environmental Protection Agency for alleged violations of the Resource Conservation and Recovery Act and the Clean Water Act.

### **FISCAL IMPLICATIONS**

The \$275,000 civil penalty will accrue to the County's 2011 Budget, for which there are sufficient appropriations available.

### **REASONS FOR RECOMMENDATION**

The Court is requiring this civil penalty be paid by April 4, 2012, at which time, if the payment is not made, penalties and interest will be required to be paid.

### **CONSEQUENCES OF NEGATIVE ACTION**

The County will be in violation of the Consent Decree and will have to pay interest and penalties in addition to the civil penalty.

### **STEPS FOLLOWING APPROVAL**

The Departments of Public Works and Law will work with the Budget Office and Comptroller's Office to effectuate the electronic funds transfers.

**A RESOLUTION SUBMITTED BY  
DEPARTMENT OF PUBLIC WORKS**

RE: Payment of Civil Penalty – US Environmental Protection Agency

WHEREAS, without admitting or denying liability, the prior County administration signed a Consent Decree with the US Department of Justice in 2011 settling litigation filed against the County by the United States of America involving alleged violations of the Resource Conservation and Recovery Act and the Clean Water Act, and

WHEREAS, the Consent Decree was certified by the federal judge overseeing the case on March 4, 2012 and the civil penalty requires the County remit the payment via electronic funds transfer by April 4, 2012, and

WHEREAS, the civil penalty totals \$155,000 for the Clean Water Act, and the civil penalty totals \$120,000 for the Resource Conservation Recovery Act, and

WHEREAS, the Consent Decree was signed by then-County Attorney Jeremy Colby in 2011, and

WHEREAS, this settlement shall post as a 2011 expense of the County, based on the 2011 agreement, and

WHEREAS, funding is available within the 2011 budget of the Department of Public Works' Division of Buildings and Grounds,

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the payment of the \$275,000 civil penalty in this matter and the Division of Budget and Management is hereby authorized to adjust the Adopted 2011 Budget of the Division of Buildings and Grounds as follows:

Fund Center 12220

<u>Appropriation</u>	<u>Decrease</u>
Account 516010, Contractual Payments-Nonprofit Purchase of Services	\$175,000
Account 516050, Departmental Payments to ECMCC	\$100,000

<u>Appropriation</u>	<u>Increase</u>
Account 530000, Other Expenses	\$275,000

and be it further

RESOLVED, that the Division of Buildings and Grounds is authorized to make payment from Fund Center 12220, Account 530000 in the amount of \$275,000 and the Office of Comptroller is authorized to make the electronic funds transfer payments before April 4, 2012; and be it further

RESOLVED, that certified copies of this resolution will be forwarded to the County Executive, the Office of the Comptroller, the Department of Law, the Division of Budget and Management, and the Department of Public Works.