

# **REVIEW OF THE ERIE COUNTY STORM FUND**

Analysis of the County's Expenses and Reimbursements  
Associated with the October 12-13, 2006 Storm



**MARK C. POLONCARZ  
ERIE COUNTY COMPTROLLER**

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Michael R. Szukala, MBA, CIA  
Deputy Comptroller - Audit & Control

## **Background**

On October 12-13, 2006, Erie County experienced a severe lake effect snow and ice storm. This storm, soon dubbed the “October Storm” or the (“Storm”), snapped tree limbs still possessing significant foliage, broke thousands of power lines and caused considerable damage throughout northern Erie County, particularly in parts of Buffalo, and the Towns of Tonawanda, Amherst, Cheektowaga, Lancaster, Clarence, and Alden. Some parts of the county received two feet of snow in less than twelve hours. The Storm was officially referred to by the National Weather Service as Lake Storm Aphid.

An estimated 400,000 people were without power starting on October 13, 2006. About 100,000 households remained without power for a week, and a few thousand remained without power for about ten days. Phone and cable service was also disrupted. In some places, residents lost access to water or were urged to boil their water when Erie County Water Authority systems failed due to a loss of power. Tens of thousands of trees were damaged or destroyed, blocking roads, damaging buildings, and power lines. Ultimately, aside from the considerable expense borne by the electric utilities in restoring lines, the single-largest expense and issue arising from the Storm was the expense associated with clearing trees and broken limbs with foliage from properties across the county. Some estimates represented the amount of debris needed to be cleared and disposed at thirty million tons (30,000,000).

On October 13, 2006, New York Governor George Pataki declared a state of emergency for Erie, Niagara, Genesee and Orleans Counties and dispatched State equipment and crews to assist in clearing debris. Local mayors and town supervisors also declared states of emergency in their respective municipalities. The Federal Emergency Management Agency (“FEMA”) initially issued a temporary disaster declaration allowing for federal assistance, including financial, for local governments, but which did not address or provide for assistance to individual households affected by the Storm. The initial FEMA declaration provided for \$5 million in aid to local governments.

The New York National Guard was mobilized to assist local emergency services and public works responders. National Grid and New York State Electric and Gas not only mobilized crews from across the state, but were forced to bring in crews from out of state and other electric companies under mutual aid agreements to help fix power lines and poles and restore electricity. Erie County Executive Joel A. Giambra requested additional National Guard support and he hired private contractors to assist County crews with debris clean-up on roads.

### **Initial Estimates of the Storm Expense for the County:**

Within six (6) days, County officials estimated the clean-up costs for the Storm at \$100 million for County employees and contractors and Giambra noted that the County was following FEMA and State policies and rules to help ensure the County could be reimbursed. The New York State Emergency Management Office (“SEMO”) estimated the initial expense at \$95 million but noted that the number would change and likely grow. Days later, the County revised its projection to \$150 million for County expense and Giambra stated that total expenses for all local

governments and the County could run to \$250 million. All officials repeatedly stressed that these were projections and estimating the cost was difficult until debris could be fully measured.

At the urging of local officials and members of the local congressional delegation, on October 24, 2006, President George W. Bush declared Erie, Niagara, Genesee and Orleans Counties a “major disaster” area. This declaration allowed for individual financial assistance to affected households and individuals. This action was supported and greeted warmly by local officials and members of the congressional delegation who had pushed for federal assistance to individuals who would likely not otherwise be compensated for uninsured Storm damage.

Most importantly, the President’s declaration allowed for significant federal and state financial assistance to the County and local governments, with FEMA paying 75% of the municipal clean-up expenses and SEMO paying the remaining 25%.

During the Storm, Erie County immediately activated and opened its Emergency Operations Center (“EOC”) in Cheektowaga and conducted and coordinated recovery and clean-up operations from that facility not only during the initial Storm period, but for months afterwards, including claims processing, contractor retention, and debris monitoring. The County utilized employees from nearly every department at the EOC in a variety of roles, including data entry, answering telephones, contractor supervision, supply management, and serving as guides to out-of-town officials and contractors.

In the week following the Storm, Giambra appeared on television stations and appealed to local contractors to contact the County to assist in debris removal. Initially, during the first few days after October 13<sup>th</sup>, several local firms worked to assist the County under emergency hiring provisions. The County announced it was seeking bids from contractors and dozens of firms responded, most from out-of-state. The County Executive then made a policy decision to award contracts for debris removal and clean-up to local firms. This differed from other local municipalities, some of which hired out-of-state firms with expertise in disaster recovery. However, ultimately, because most local companies that were awarded contracts by the County for Storm recovery did not have all the manpower, equipment, or expertise needed, many retained out-of-state companies as subcontractors. The Giambra decision to award contracts to eleven (11) local firms (even if the local contractors then hired non-local subcontractors) in all likelihood increased the County’s expense when compared to other localities such as the Towns of Tonawanda and Amherst.

On October 24, 2006, the Erie County Legislature unanimously approved Comm. 20E-9, County Executive Giambra’s request to establish budgetary modifications for the Storm. Specifically, this resolution authorized the creation of Fund 250, the Storm Fund, where all expenses and revenues associated with the Storm would be recorded in order to seek and receive FEMA and SEMO reimbursement. Initially, the authorization provided for a total fund of up to \$200 million consisting of \$150 million of federal revenue and \$50 million of state revenue.

### **Focus of this Report**

In 2010, the Comptroller directed his Division of Audit and Control to conduct an analysis of the County's expenses and revenues related to the Storm. This report does not include any expense or revenues associated with individual towns' response to the Storm, such as Buffalo, and the Towns of Amherst and Tonawanda. This report is not an audit or review per se of the County's response to the Storm or its accounting or reporting of/for the Storm Fund. The County's expenses and claims for reimbursement for the Storm were subject to, and were audited by FEMA and SEMO. Our work product is a review of the expenses and revenues recorded by the County in Fund 250 since 2006 and are intended to provide a final overview to the Erie County Legislature, County Executive, and the taxpayers of Erie County of the public funds expended due to the Storm.

### **Methodology:**

With the exception of contacting the former Deputy Commissioner of Emergency Services, clarifying several data issues, our office did not interview County officials who coordinated and directed the County's response to the Storm and post-Storm debris clean-up. Our review was limited to developing and analyzing data in the County's SAP financial accounting system.

### **Process for Receiving Federal/State Reimbursement**

The County's Department of Emergency Services ("Emergency Services") served as the lead agency for the County after the Storm in accounting for expenses, seeking reimbursement and interacting with SEMO. Emergency Services was responsible for gathering all cost data, and then filing all claims with SEMO. The claims were broken down into groups, called "packages," as per the guidelines provided by SEMO. Deputy Commissioner Dean Messing served as the County's lead official with SEMO and FEMA. In addition, then-Deputy Commissioner of Public Works-Highways Gerard Sentz (now Commissioner of Public Works) and then-Director of Purchase Vallie Ferraraccio served as managers for the Storm response. Their involvement included, specifically, a process by which Mr. Messing, Mr. Sentz and Ms. Ferraraccio were each required to approve all invoices for payments to debris monitors and contractor payments. For every expense sent by the County, SEMO and/or FEMA representatives on the ground in Erie County or in Albany had to review and approve before reimbursement would be made.

Initially, the disaster declaration was limited, giving the County only a limited period of time in which to engage in debris removal and clean-up work and request reimbursement. Deputy Commissioner Sentz (who became Commissioner of Public Works in January 2008) requested and received FEMA permission to extend the state of emergency three (3) times, with the final extension granted in April 2008 expiring on October 24, 2008. These extensions allowed the County and its contractors and employees to continue working on Storm-related projects and submit for federal and state reimbursement. Ultimately, the state of emergency declaration allowing for reimbursement lasted for more than two (2) years.

For a typical reimbursement, a day or so before the payment was received, a letter would be sent from SEMO, who released the payments, to Emergency Services or the Comptroller's Office identifying what packages the state or the federal government was paying and how much of the payment was federal, state or administrative costs.

Administrative costs were not part of the claim sent to SEMO. They were paid as an additional amount, approximately 1% of the claim. Administrative costs are all covered by federal revenue and based on the full amount of the claim. The percentage of administrative costs for the Storm paid for by the federal government started at 3%, and is now down to 0.5% (less than 1%). Occasionally, the County received a payment or reimbursement lacking supporting detail concerning associated covered costs. When an unidentified payment was received, it was recorded in SAP in one of two accounts until such time as the breakdown was identified. As of August 1, 2010, all payments have been identified.

### Reimbursements

Based on data in Fund 250 in SAP, total reimbursements to the County are as follows as of August 1, 2010:

**Table One  
Revenues by Source**

Name	Amount
Federal Aid (FEMA)	\$41,547,845.71
State Aid (SEMO)	13,801,110.62
Town of Amherst	1,571,102.92
Other Local Source Revenue	227,705.00
Federal Aid	76,599.00
Federal Aid – Other	17,851.46
Town of Clarence	5,730.00
General Services – Other Government	3,006.00
Local Source – ECMCC	360.00
<b>Total Reimbursements Claimed</b>	<b>\$57,251,310.71</b>

Due to some administrative expenses being reimbursed as a fixed amount, rather than reimbursing specific expenses, the amount of reimbursements claimed exceeds that of the County's actual expenses by \$1,361,983.58.

At an Exit Meeting held for this report, Commissioner Sentz and Mr. Messing stated that the County incurred some expenses that were not reimbursed by the federal or state governments. They noted that as a result, they did not track some expenses, such as certain administrative expenses. They also stated that in some cases, the County incurred expenses that were deemed un-reimbursable by either FEMA or SEMO. At our request, Mr. Messing sent our office an e-mail stating five (5) un-quantified expenses denied by FEMA and SEMO that he stated totals approximately \$50,000.

Table Two below shows the dates when expenses were incurred and when reimbursements were received:

**Table Two**  
**Schedule of Reimbursements by Year**

<b>Year</b>	<b>Reimbursement/Payment</b>	<b>Expenses</b>
2006	\$19,840,738.52	\$41,608,385.95
2007	26,351,240.73	8,132,026.04
2008	1,424,531.80	6,137,754.13
2009	7,039,674.73	11,161.00
2010	640,362.67	0
<b>Reimbursements Still Due</b>	<b>\$1,954,762.25</b>	<b>\$0</b>
<b>Total</b>	<b>\$57,251,310.70</b>	<b>\$55,889,327.12</b>

As the above table shows, the time-lag between when a service is provided and invoiced, and when the County is reimbursed can be substantial.

**As noted above, based on entries made by Emergency Services, the County's SAP system still shows SEMO as owing the County \$1.95 million for submitted claims.** Despite repeated attempts by the County to receive these final revenues and close-out the Storm Fund, the State has not released the funds nearly two (2) years after the emergency declaration expired and four (4) years after the Storm. SEMO officials have previously stated that the delay was due to FEMA reviewing County claims. Other information suggests that the State Division of Budget has held the funds and declined to release the final reimbursement to the County. The \$1.95 million in claims have been audited and approved by both SEMO and FEMA.

Included in the \$1.95 million is \$216,958 owed to the County by the City of Buffalo for stump removal. The City has promised payment to the County when the City is reimbursed by FEMA and SEMO.

**Expenses**

As described in Table Three below, during the two (2) year state of emergency period, the County incurred and sought FEMA and SEMO reimbursement for expenses totaling \$55,889,327.12:

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**Table Three  
Expenses by Category**

<b>Administrative Expenses</b>	<b>Amount</b>
Emergency Operations Center Supplies – Office	\$199,236.35
Food, Beverages & Cooking/Heating Supplies	89,548.11
Other Administrative Expenses	88,800.50
Emergency Operations Center Supplies – Other	11,295.26
<b>Total Administrative Expenses</b>	<b>\$388,880.22</b>

<b>Debris Removal Expenses</b>	<b>Amount</b>
Debris Removal – Contractors	\$39,589,304.67
Debris Removal – County Debris Monitors	7,797,327.63
Stump Removal	1,779,751.91
Arborist – Tree and Limb Removal	1,474,946.77
Debris Removal – Supplies & Equipment Rental	407,125.00
Mutual Aid	158,646.17
Weather Disaster Repairs	73,564.47
<b>Total Debris Removal Expenses</b>	<b>\$51,280,666.62</b>

<b>Labor Expenses</b>	<b>Amount</b>
Overtime	\$3,039,147.02
Fringe Benefits	491,045.06
FICO Recon-Manual Cost Allocation	277,004.50
Part Time – Wages	101,692.99
Other Employee Payments	79,649.17
Full Time – Salaries	57,700.82
Local Mileage Reimbursement	50,428.56
Employer FICA	42,034.30
Regular Part Time Wages	36,365.17
Shift Differential	25,678.20
Employer FICA Medicare	9,830.71
Holiday Worked	8,847.28
Out of Area Travel	356.50
<b>Total Labor Expenses</b>	<b>\$4,219,780.28</b>

**Debris Removal Contractors was Largest Expense:**

The single largest category of expense incurred by the County was debris removal. The County made payments of \$39.6 million to thirty nine (39) contractors for services classified as “debris removal.”<sup>1</sup> This was 71% of total expenses. A number of these contractors were and remain major County vendors on highway projects. In addition, some of these entities also received additional payments in the “hanging limb and tree removal” and the “stump removal” categories. \$37 million of the \$39.6 million went to the ten (10) largest vendors, as described in Table Four below:

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<sup>1</sup> Our review of the list of 39 contractors receiving the \$39.6 million categorized as debris removal includes at least one contractor, James Lee Witt Associates (paid almost \$24,000) who was not a debris removal contractor, but a disaster consultant. Mr. Witt was FEMA director in the administration of President William Clinton.

**Table Four  
Top Ten Debris Removal Contractors**

Name	Total Paid
Zoladz Construction	\$9,547,868.43
UCC Constructors, Inc. <sup>(1)</sup>	8,243,252.81
American Site Developers LLC	7,258,922.90
Dipizio Construction Co. Inc.	4,466,337.25
Boldt's Evergreen	2,904,135.00
Acquest Funding DBA-Boldts <sup>(1)</sup>	1,770,136.91
Terry Tree Service	1,495,870.00
Malcolm Pirnie, Inc.	1,100,000.00
Amherst Paving	1,065,641.50
Nichols, Long & Moore	928,541.25
<b>Total</b>	<b>\$38,780,706.05</b>

(1) These vendors have more than one vendor number in the County's SAP system.

More than ninety percent (90%) of the funds disbursed for debris removal, arborist services, tree and stump removal and over sixty-nine percent (69%) of all funds disbursed due to the Storm went to the above firms.

The complete list of all contractors and payments for debris removal and related services is in Appendix One.<sup>2</sup>

**Debris Monitors:**

The next largest category of expense was the County's hiring of "debris monitors" at \$7.8 million, or 14% of total expenses. Following the storm, in order to ensure that all the debris contractors were accurately and legitimately performing their functions, and disposing of the correct amounts of debris, the County hired a group of individuals to serve as debris monitors in the field. These individuals, some of whom were friends or family members of County employees, served as independent contractors to the County, and were not categorized as County employees. They were paid hourly wages and a daily gas allowance with no withholdings by the County. SAP shows that one hundred and nine (109) individuals were paid as debris monitors.<sup>3</sup>

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<sup>2</sup> During 2007 and 2008, the County was directed to place liens or levies against several Storm debris contractors. Specifically, in the case of American Site Developers ("ASD"), the County was directed in ten (10) separate instances to hold-back payments to ASD totaling \$2,086,756 concerning four (4) vendors, and was told twice by the New York State Department of Labor to hold-back payments related to two (2) other vendors. In addition, the Erie County Department of Law directed the Comptroller's Office to hold-back \$200,000 to ASD in June 2007 due to a worker's compensation issue. To date, that money has still not been released and is residing in the County's Trust Fund. \$56,072 for another subcontractor that had a levy placed by the New York State Department of Labor has also still not been fully released. All other liens and levies were eventually released and payments issued.

<sup>3</sup> In 2010, the County was notified by the New York State Department of Labor that despite her status as an independent contractor, one (1) debris monitor had filed a claim for unemployment insurance after completing her service to the County. The State Department of Labor reviewed her claim and determined that she had the right to claim unemployment insurance from the County. The County subsequently paid that contractor unemployment compensation.



In addition, SAP shows that the firm Malcolm Pirnie was paid through two (2) separate vendor numbers as a debris monitor. Out of a total of \$7,797,327 in debris monitor payments, Malcolm Pirnie was paid \$6,152,716 through the Storm Fund for debris monitor services, or about 79% of all payments. This is in addition to \$1,100,000 paid to Malcolm Pirnie as a debris removal contractor.

For the complete list of all payments to debris monitors, please see Appendix Three.

### **Overtime for Existing County Employees:**

The third largest County expense for the Storm Fund was personal services related for County employees. This includes overtime, fringe benefits, holiday pay, other compensation, and wages for some new part time and full time County employees. Total labor-related expense charged to the Storm Fund was \$4.2 million, or 7.6% of total expense. This does not include compensatory time awarded to certain County employees during the Storm.

Of this amount, \$3.039 million was overtime for existing County employees who worked on the Storm response. The County paid 928 employees overtime through the Storm Fund between October 12, 2006 and October 24, 2008. Our analysis of expenditures related to the Storm revealed that overtime costs related to the Storm were heavily concentrated within a few departments and individuals. Fourteen (14) of the top twenty (20) overtime recipients were from the Sheriff's Department – either Jail Management or the Sheriff Division.

The average overtime/shift premium and holiday pay earned by the 928 persons in Appendix Two was \$3,115. However, the average overtime/shift premium and holiday pay earned by those persons in the top twenty of overtime earnings was \$46,956 per person. If the top twenty overtime earners are removed, the remaining 908 persons average \$2,150 in overtime.

Simply stated, less than 3% of those persons who charged overtime to the Storm earned nearly one third of all the overtime, shift differential and holiday pay charged to the Storm.

Seven (7) of the top twenty (20) overtime recipients also subsequently retired from the County between late 2008 and the present, thus likely boosting their annual pensions due to the overtime and the corresponding significant increase in their salaries.

As noted in Table Five below, twenty (20) employees received over 30% of all the overtime charged to the Storm Fund. Three (3) of these 20 employees were managerial-confidential employees.<sup>4</sup>

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<sup>4</sup> The three managerial-confidential employees are Gerard Sentz, Dean Messing and Leon Colucci.

**Table Five  
Top 20 Overtime Earners**

<b>Name</b>	<b>OT Hours</b>	<b>OT Dollars</b>	<b>Department</b>	<b>Title (at time)</b>
Martin Bronisz**	1,950.83	\$78,969.53	Sheriff	Sergeant/Deputy Sheriff-Criminal
Gerard Sentz	1,390.43	\$70,757.79	Public Works	Deputy Commissioner-Highways
Charles Sickler**	1,008.56	\$70,523.58	Public Works	Principal Civil Engineer
Dean Messing**	2,031.37	\$68,271.28	Emergency Services	Deputy Commissioner*
Duane Liebler**	1,737.00	\$66,502.80	Sheriff	Corrections Officer
Chester Kasprzyk**	1,574.00	\$60,262.17	Sheriff	Corrections Officer
Kenneth Brennan**	1,378.34	54,893.38	Sheriff	Deputy Sheriff-Criminal*
Jeffrey Cutler	1,769.38	\$53,738.61	Emergency Services	Fire Instructor PT
James Bauer**	1,261.00	\$49,638.49	Sheriff	Deputy Sheriff-Criminal
Donald Trzepacz	1,221.44	\$37,227.81	Emergency Services	Fire Instructor PT
Terrance Guenot**	910.00	\$36,182.89	Sheriff	Deputy Sheriff-Criminal*
David Barbaritz**	966.50	\$35,148.48	Sheriff	Deputy Sheriff-Criminal
John Sroda**	888.00	\$33,617.02	Sheriff	Corrections Officer*
Thomas Flaherty**	643.25	\$32,814.45	Sheriff	Captain*
Michael Lesinski**	847.33	\$32,571.22	Sheriff	Deputy Sheriff-Criminal*
Leon Colucci**	1,310.88	\$32,055.17	Public Advocacy	Assistant Veterans Service Officer*
Robert Rine**	884.50	\$31,162.02	Sheriff	Deputy Sheriff-Criminal
Paul Terranova**	723.17	\$30,948.42	Sheriff	Detective Deputy
Richard Horst**	798.50	\$30,806.80	Sheriff	Deputy Sheriff-Criminal
David Makowski**	773.00	\$29,018.56	Sheriff	Deputy Sheriff-Criminal
<b>TOTALS</b>	<b>24,067.48</b>	<b>\$935,110.47</b>		

\* In the "Title" column indicates the employee subsequently retired from the County.

\*\* In the "Name" column indicates the employee also received other pay through the Storm fund – such as "holiday worked" or shift premium. Details are shown in Appendix Two.

During our review, we found that two part time fire instructors in the Department of Emergency Services who had cumulatively earned less than \$1,000 in pay in 2005 received significant part-time wages, overtime, and mileage reimbursements during the Storm period. We were informed that these two individuals were named debris monitor supervisors. The two part-time employees cumulatively received \$157,997 in salary, \$95,696 in overtime, and \$48,757 in mileage reimbursements between October 13, 2006 and December 31, 2008 which was charged to the Storm Fund. These expenses are recorded in the categories in the table on page six (6) of this report.

Upon questioning, we were informed that corrections officers received large amounts of overtime due to their supervision of County inmates who were assigned to work on the Storm response. At the Exit Meeting, Commissioner Sentz stated that FEMA mandated security be provided, such as the 24/7 security provided at the County's EOC, and at dump sites to prevent the illegal dumping of debris. He also stated that during the removal and trimming of trees, some County employees or contractors were threatened and insisted on having Sheriff's deputies present when performing Storm-related tasks. Commissioner Sentz also noted that five felony convictions resulted from Storm security work. The office of the Erie County District Attorney confirmed to our office that prosecutions related to the Storm were conducted.

At the Exit Meeting, we were also informed that the two part-time fire instructors were overseeing non-County employees acting as "Senior Supervisors."

A complete list of all County employees who received overtime/shift differential and holiday pay through the Storm Fund is attached as Appendix Two. Table Six below describes the amount of overtime charged to the Storm Fund by department:

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**Table Six**  
**Storm Fund Overtime by Department**

Name	Amount
Sheriff <sup>5</sup>	\$1,561,243.23
Department of Public Works <sup>6</sup>	463,390.74
Parks	285,025.09
Emergency Services	188,050.03
Health	79,975.22
Information & Support Services	72,448.12
Department of Social Services	62,464.32
Comptroller <sup>7</sup>	61,511.51
County-Wide Accounts	54,742.09
Central Police Services	48,806.68
Office of Public Advocacy	32,185.47
Bureau of Purchase	25,564.98
Personnel	22,668.61
Budget & Management	21,886.53
Sewer Management & Districts	16,254.81
Environment and Planning	13,406.27
Senior Services	13,019.36
Department of Law	5,325.90
Bureau of Fleet Services	5,005.47
Probation	2,904.64
County Executive	2,491.72
County Clerk	613.12
District Attorney	163.11
<b>Total</b>	<b>\$3,039,147.02</b>

Of the department charges to overtime, the County-Wide Accounts amount of \$54,742.09 is the amount charged to the FEMA claim for Sewer Districts.

Of the total amount of \$3,039,147.02 of overtime charged to the Storm Fund, \$253,395.79 was not classified and accounted to specific employees. Sewerage Management charged \$55,270.69, and Public Works charged \$198,125.10. This is of concern as an accounting issue, as this is 8% of all overtime charged to the Storm Fund. In other words, there are no details in SAP showing which employees' were paid overtime for 8% of the Storm Fund overtime expense – just lump sum journal entries. At the Exit Meeting, we were informed that this data exists but that it is not in machine-readable format and is stored off-site. We were also told that the input of this data into SAP would be time-consuming, hence the rationale for not loading it into SAP.

Many of the County employees who received overtime through the Storm Fund worked at the EOC in data input functions. For instance, several clerks in the Comptroller's Office's Division of Accounting worked at the EOC inputting data and Sheriff deputies guarded temporary debris transfer sites.

<sup>5</sup>“Sheriff” includes all employees, including Sheriff Division road deputies and employees at the jail and holding center.

<sup>6</sup> “Public Works” includes expenses charged to Highways.

<sup>7</sup> In the interest of disclosure, we reveal that no auditors charged time or expenses to the Storm Fund. One employee of the Comptroller's Office who was a junior accountant in the Division of Accounting received 50.25 hours of overtime related to the Storm. She was promoted into the Division of Audit and Control three years later.

During our review, we determined that at least one debris monitor worked in February-March 2009 and was paid from the Storm Fund and the County sought and received reimbursement from FEMA/SEMO for those expenses. Because this occurred after the emergency declaration period had expired in October 2008, this appears to have been an impermissible action. At the Exit Meeting, we were informed that this person was assisting the FEMA and SEMO auditors with determining which costs could be reimbursed and which would be rejected.

### **Overtime and States of Emergency**

In September 2009, the Comptroller's Office issued an audit of County payroll transactions controlled by the Department of Personnel ("Personnel") for the years 2007 and 2008. This audit reported concerns with the payment of overtime to certain managerial-confidential employees as a result of the Storm. Managerial-confidential employees who follow the CSEA contract are normally barred by County policy from receiving cash overtime or earning compensatory time in excess of 80 hours.<sup>8</sup>

During and after the storm, County officials coordinated significant storm operations for weeks, with many County employees accruing significant amounts of overtime. As a result, the Giambra Administration requested and received Legislature approval on October 24, 2006 (Comm. 20E-8) to award cash overtime to County employees who worked overtime associated with the Storm, including managerial-confidential employees who would otherwise be barred. This action was a significant policy shift.

As amended by the Legislature, this resolution gave a broad group of titles, particularly managerial-confidential employees who would not otherwise be entitled, the ability to receive cash overtime during a state of emergency declared by the County Executive. The resolution covered the period "October 12, 2006 through the end of the Declaration by the County Executive" and "any future time period". The resolution covers all titles except those listed in the resolution. The titles that cannot be compensated on a cash basis for their overtime in a declared emergency are described in Table Seven below:

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<sup>8</sup> Managerial-confidential employees below Job Group 12 may earn up to 240 hours of compensatory time. Those appointees above that job group may only accrue up to 80 hours.

**Table Seven  
Titles Not Covered in the Resolution**

Commissioner of Emergency Services	Director of Erie County Medical Center
Commissioner of Mental Health	Commissioner of Social Services
Commissioner of Personnel	Commissioner of Youth Services and Detention
Commissioner of Public Works	President of Erie Community College
Commissioner of the Board of Elections	Director of Government Affairs
County Attorney	Director of Buffalo and Erie County Public Library
Crime Control Coordinator	Assistant Director of Public Health (Laboratory)
Director of Central Data Processing	Commissioner of Parks and Recreation
Director of Labor Relations	Commissioner of Senior Services
Director of Probation	Commissioner of Health
Executive Director of the Office of the Disabled	Commissioner of Central Police Services
Purchasing Director	Veterans Service Officer
Superintendent of the Correctional Facility	Commissioner of Fire Safety

This resolution did not and does not deny any County employee, especially managerial-confidential employee overtime; rather, it denies the cash payment of overtime. Compensatory time can still be earned by those who qualify. The titles that could receive cash overtime under this resolution cannot be fully determined, as the titles that qualify for overtime as compensatory time have not been determined. As a result, the Legislature has approved a resolution that may incur unintended financial consequences. Our review of 2007 and 2008 records indicates that fifty six (56) managerial-confidential employees who would not have previously been eligible to receive cash overtime did so based on the passage of the above-referenced resolution.

We believe that the broad authority the Legislature gave to the County Executive for awarding cash overtime in emergency situations is unnecessary. We believe that the above resolution should be rescinded by the Legislature and instead cash payments for overtime for managerial-confidential employees on a case-by-case basis as requested by the County Executive following declared states of emergency and only after being approved via resolution by the Legislature.

At our Exit Meeting for this Storm report administration officials expressed considerable disagreement with this recommendation. Mr. Messing stated that the County needed to set a precedent on the payment of overtime as per FEMA. He stated that a failure to do so would place future overtime reimbursements in jeopardy. Mr. Messing also said that since overtime is reimbursable and compensatory time is not, the County would be foolish not to pay for overtime.

At the prior personnel audit exit conference, the Commissioner of Personnel voiced the opinion that the above ‘blanket’ resolution was necessary and was fiscally responsible because for those managerial-confidential employees working on disasters, the County could recoup the salary expense through federal or state disaster assistance funds, whereas compensatory time is not eligible for reimbursement. Personnel maintained that without the ability to award managerial-confidential employees with cash overtime, those employees would not work during a disaster.

We recognize the validity of the administration’s comments, but our objection remains as to the broad granting of authority by the Legislature to the Executive’s office. The Legislature can still, retroactively, approve such overtime on a case-by-case basis as they did during the Storm.

## **Conclusion**

The Storm was a significant event for Erie County and its residents and established records with the National Weather Service. The County incurred expenses totaling \$55.9 million over a four year period and submitted claims for reimbursement totaling \$57.2 million, of which \$55.9 million has been paid. This does not include any expenses or reimbursements from the federal and state governments for other local governments, such as the City of Buffalo, or Towns of Amherst and Tonawanda, for instance, all of which handled their Storm accounting and contracting largely or completely separate from the County.

The Erie County Executive has publicly stated that the County's response to the Storm served as a model for the County's response to other situations, including the February 2009 Continental Flight 3407 crash response, and the February 2008 Hepatitis A outbreak and response. Others have indicated that the County's response has similarly been cited by FEMA as an example for other municipalities in handling a disaster of this kind.

Arborists and tree experts have noted that the damage from the Storm will take decades to fully recover from, due to the extensive damage to trees, the destruction of tens of thousands of trees, and the gradual replacement and planting of new trees and seedlings in neighborhoods.

## **Exit Meeting**

On September 20, 2010, an Exit Meeting was held with Mr. Sentz, Mr. Messing, and Commissioner of Emergency Services Gregory Skibitsky. When appropriate, their comments have been added to this document.

## **Schedule of Appendices**

Appendix One – Contractors Paid for Debris Removal and Other Services

Appendix Two – Employee Overtime, Holiday and Shift Premium charged to the Storm

Appendix Three – List of Payments to Debris Monitors