

BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

AUDIT REPORT
OF
EMERGENCY MANAGEMENT AGENCY
VERMILLION COUNTY, INDIANA
January 1, 2008 to December 31, 2008



FILED
12/31/2009

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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Director	Ramon J. Colombo (Vacant) Mark O'Heir	01-01-08 to 09-30-08 10-01-08 to 02-28-09 03-01-09 to 12-31-09
President of the County Council	John Yoho (Vacant) John A. Cheesewright	01-01-08 to 06-06-08 06-07-08 to 07-13-08 07-14-08 to 12-31-09
President of the Board of County Commissioners	Tim J. Wilson	01-01-08 to 12-31-09



STATE OF INDIANA
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TO: THE OFFICIALS OF VERMILLION COUNTY

We have audited the records of the Emergency Management Agency for the period from January 1, 2008 to December 31, 2008, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of Vermillion County for the year 2008.

STATE BOARD OF ACCOUNTS

September 30, 2009

EMERGENCY MANAGEMENT AGENCY
VERMILLION COUNTY
AUDIT RESULTS AND COMMENTS

PAYMENT FOR ACCRUED SICK, PERSONAL, AND COMPENSATORY TIME

Three employees of the County's Emergency Management Agency were paid in 2009 for accrued leave time balances earned through their last dates of employment in 2008. The payments were made from the Chemical Stockpile Emergency Preparedness Fund; however, local monies were used, as the amounts were not reimbursed by the Federal program. Included in the payments were amounts for sick, personal, and compensatory time, all of which were not allowed to have been paid at termination based on the Vermillion County Employee Handbook policies. The types of leave time for which county policy does not allow compensation at termination and the amount paid for each employee are as follows:

<u>Employee</u>	<u>Title</u>	<u>Last Date of Employment</u>	<u>Check Date</u>	<u>Check Number</u>	<u>Leave Type</u>	<u>Amount Paid</u>
Ramon J. Colombo	Director	09-30-08	03-06-09		Sick Time	\$ 6,796.02
					Compensatory Time	<u>11,768.00</u>
Total paid				81316		<u>\$ 18,564.02</u>
Kirt E. Lowry	Logistics Specialist	10-01-08	03-06-09		Sick Time	\$ 4,575.62
					Personal Time	<u>157.78</u>
Total paid				81317		<u>\$ 4,733.40</u>
Bobette J. Warnick	Deputy Director	12-31-08	03-06-09	81318	Sick Time	<u>\$ 4,683.53</u>

The following excerpts taken from the Vermillion County Employee Handbook, adopted August 5, 2004, and still in effect, address each type of leave time and it's authorization to be paid, or not, at termination of employment:

"Personal Days . . . personal days are not wages and will not be paid upon separation from employment." (page 22)

"Sick Leave . . . #11. A regular full-time employee or regular part-time employee who leaves the employment of the County will not be compensated for unused Sick Leave." (page 25)

Regarding compensatory time, the Handbook states:

"The County is not required to compensate an exempt employee for overtime worked. However, the County has elected to establish a policy for granting compensatory time off to exempt employees for exceptional circumstances. Under no circumstances will an exempt employee receive monetary compensation for hours worked over (forty (40) in a work week. . . . However, an exempt employee may be granted compensatory time under those exceptional circumstances when the Elected Official believes that the temporary job demands require more time for completion by the employee than would normally be required. The purpose of granting this exceptional compensatory time is to provide the exempt employee additional time off during his or her County employment when the workload permits. This exceptional compensatory time is not to be construed as wages earned or an entitlement as an exempt employee is paid on a salary basis regardless of hours worked." (page 12)

EMERGENCY MANAGEMENT AGENCY
VERMILLION COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

In addition, the Handbook lists these definitions (pages 6 and 7):

"EXEMPT EMPLOYEE - An employee who is not covered by the overtime pay provisions of the Fair Labor Standards Act."

"NON-EXEMPT EMPLOYEE - An employee whose position is covered by the overtime provisions of the Fair labor Standards Act."

Different rules for earning and using compensatory time apply based on whether the employee is considered an "exempt" or "non-exempt" employee, the definitions of which the Handbook references the Fair Labor Standards Act. Under 29 United States Code 213(a)(1) of the Fair Labor Standards Act, an exempt employee is an "employee employed in a bona fide executive, administrative, or professional capacity." For an employee to be classified as an exempt employee under the "executive capacity" exemption under 29 CFR 541.100, the employee must be compensated on a salary basis at a rate of not less than \$455 per week, have a primary duty of management of the organization or department in which the employee is employed, customarily and regularly direct the work of two or more employees and have the authority to either hire and fire other employees or be an employee whose suggestions and recommendations as to hiring, firing, advancement, promotion or any other change in status of other employees is given particular weight. For an employee to be classified as an exempt employee under the "administrative capacity" exemption under 29 CFR 541.200, the employee must be compensated on a salary basis at a rate of not less than \$455 per week and as their primary job duty perform office or nonmanual work directly related to the management or general business operations of the employer which includes the exercise of discretion and independent judgment with respect to matters of significance.

Mr. Colombo's final weekly salary was approximately \$954 per week. He was the Vermillion County Emergency Management Agency Director and as such was the department head of the Vermillion County Emergency Management Agency. Under IC 10-14-3-17(d)(2)(A), a county emergency management director has "direct responsibility for the organization, administration, and operation of the emergency management program in the county" and he did perform these job duties for Vermillion County and was responsible for setting policy for his department. In addition, he supervised two employees in the Emergency Management Agency. It is our position that Mr. Colombo would be classified as an exempt employee under either of the Fair Labor Standards Act definitions, and by the County's policy would not be eligible for monetary compensation for compensatory time.

The Vermillion County Commissioners and the President of the County Council agreed in a letter dated February 18, 2009, to pay Ramon J. Colombo, Bobette J. Warnick, and Kirt E. Lowry the balance of their sick and comp time leave after termination. The County paid a total of \$27,980.95 to these employees in accordance with the letter, but contrary to the policies published in the County's Handbook.

Each governmental unit should adopt written policy regarding the accrual and use of leave time and compensatory time and the payment of overtime. Negotiated labor contracts approved by the governing board would be considered as written policy. The policy should conform to the requirements of all state and federal regulatory agencies. (Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 8)

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

EMERGENCY MANAGEMENT AGENCY
VERMILLION COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

MISAPPROPRIATION OF FEDERAL PROGRAM FUNDS

Resultant of an investigation by the Indiana Inspector General's Office and the Indiana State Police, the former Vermillion County Emergency Management Agency Director, Ramon J. Colombo, was charged September 17, 2009, in the United States District Court, Southern District of Indiana, Terre Haute Division (Court) with federal program theft in violation of Title 18, United States Code, Section 666. Mr. Colombo signed a Petition to Enter a Plea of Guilty on September 4, 2009. A Memorandum of Plea Agreement was submitted to the Court by Timothy M. Morrison, United States Attorney, and by James M. Warden, Assistant United States Attorney, on September 8, 2009.

The charges stated that on diverse occasions from about October 7, 2005, until on or about June 13, 2008, the former Vermillion County Emergency Management Agency Director, Ramon J. Colombo, knowingly misappropriated federal program funds by causing a contractor to unlawfully inflate certain contracts and invoices paid by the Vermillion County Chemical Stockpile Emergency Preparedness Fund so that personal property purchases could be hidden in said documents. The property acquired by the contractor was then obtained by Mr. Colombo and converted to his own use.

Items purchased by the contractor and subsequently obtained by Mr. Colombo included televisions, appliances, furniture, and a lawn tractor. The cost of these items totaled \$19,197. Total expenditures of the program during the four year period totaled \$3,738,113.

A date has not yet been set by the Court for the possible acceptance of the Plea Agreement and sentencing. We recommended that the County continue to follow through with whatever is ordered by the Court.

EMERGENCY MANAGEMENT AGENCY
VERMILLION COUNTY
EXIT CONFERENCE

The contents of this report were discussed on September 30, 2009, with Kirt E. Lowry, former Emergency Management Agency Logistics Specialist; Bobette J. Warnick, former Emergency Management Agency Deputy Director; Tim J. Wilson, President of the Board of County Commissioners; and John A. Cheesewright, President of the County Council.

The contents of this report were discussed on October 2, 2009, with Mark O'Heir, Director; and Ramon J. Colombo, former Emergency Management Agency Director.