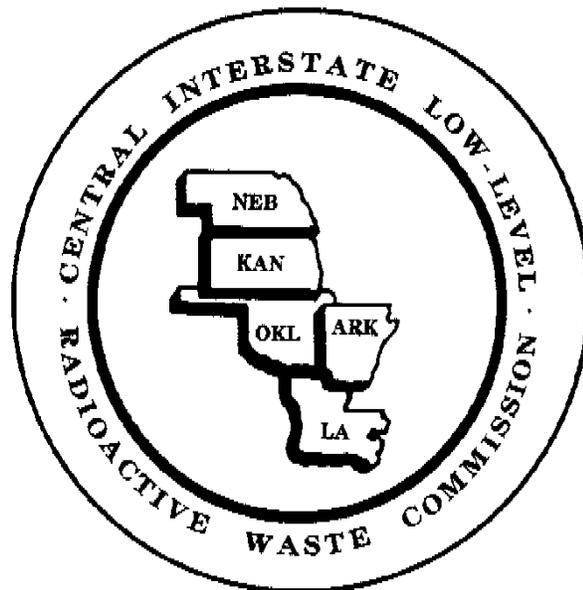


# **Central Interstate Low-Level Radioactive Waste Commission**



**Annual Report  
2000-2001**

**The purpose and objectives of the Commission are:**

To carry out the mandate of the Central Interstate LLRW Compact by providing for and encouraging the safe and economical management of LLRW within the five-state Compact region;

To provide a framework for a cooperative effort to promote the health, safety, and welfare of the citizens and the environment of the Compact region;

To select the necessary regional facilities to accept compatible wastes generated in and from party states, and meeting the requirements of the Compact, giving each party state the right to have the wastes generated within its borders properly managed at such regional facilities;

To take whatever action is necessary to encourage the reduction of waste generated within the Compact region; and

To faithfully and diligently perform its duties and powers as are granted by the Compact.

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Radioactive Waste Compact**

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## Project Background

The Commission's developer, US Ecology, Inc., (USE) submitted a license application for a low-level radioactive waste disposal facility near the Village of Butte in Boyd County in July 1990. The application was submitted to the Nebraska Department of Environmental Control (now known as Environmental Quality and referenced as NDEQ) and the Nebraska Department of Health (now known as Health and Human Services and referenced as NDHHS).

The State of Nebraska deemed the application complete for technical review in December 1991. In May 1995, after several years of review, US Ecology submitted its responses to the fourth and final round of the state's technical comments.

In June 1995, US Ecology submitted its eighth revision to the Safety Analysis Report (SAR). On July 26, 1995, the LLRW Program indicated that it would take approximately one year to conduct its final review activities and confirmed that no more technical information would be accepted from the applicant unless the reviewers requested it. State evaluations

and future decisions were to be based on this final product.

During the review of the license application, the State did not issue or commit to a review schedule or a public comment schedule. The Compact statutes, in the five-member states charge the Commission to "require the Host State to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable period from the time that a completed application is submitted."

The Commission's Facility Review Committee (FRC) drafted a technical review schedule that was in compliance with the respective federal and state laws and regulations. This draft schedule was adopted by the Commissioners at their January 1996 meeting. At the March 1996 meeting, the Commissioners voted to reaffirm their schedule. At the Annual Meeting of the Commission in June 1996, the Commissioners rescinded the Commission's technical review schedule and unanimously approved setting a Special Commission Meeting on August 27, 1996, for the purpose of "... developing and determining a reasonable schedule for the completion of

the processing of the pending application for a license for the Compact's regional low-level radioactive waste disposal facility."

At public information meetings conducted by the NDEQ and the NDHHS on August 19 and 21, 1996, the state released information that called for the issuance of a Draft Safety Evaluation Report (DSER) and a Draft Environmental Impact Assessment (DEIA) in October 1997. Nebraska provided this same information to the Commission along with other materials at its special meeting on August 27, 1996, but did not directly participate in the Special Meeting.

At a September 30, 1996, meeting, the Commissioners approved a motion that established a time frame between December 14, 1996 and January 14, 1997, as the scheduled date for receipt of the DSER and DEIA and a draft license decision from the LLRW Program. They also approved a motion that there be a single consolidated comprehensive public comment period and public hearing process on the draft documents and draft license decision.

On November 27, 1996, the State of Nebraska filed suit against the Commission the

alleging that it was aggrieved by the Commission's two motions.

In October 1997, the state released their Draft Safety Evaluation Report and the Draft Environmental Impact Analysis. Of the 152 evaluation areas, the reviewers found US Ecology's application and technical materials acceptable in 123 cases and unacceptable in only 29 instances. In the area of safety assessment, the state conducted their own Independent Performance Assessment for which the results indicated annual doses less than the regulatory limits. The state additionally indicated in the draft evaluation documents that the proposed facility would result in impacts to several environmental resources. However, the state's draft environmental impact analysis indicated all potential adverse environmental impacts can be mitigated except for sociocultural impacts. The draft documents indicated that these impacts are expected to decline during the period of facility operation, assuming the facility operates without radiological accidents. The draft license decision was not released with the draft evaluation documents. The release of the draft evaluation documents started the 90-day public comment

period ending with a public hearing on the evaluation documents. The public hearings were held in early February 1998, in Naper, Nebraska and in Butte, Nebraska (the host community).

The interested public and the Commission's developer participated in the public comment period and the public hearing. US Ecology said the state's finding of 29 unacceptable areas provided clear guidance for future US Ecology work on fully resolving all regulatory concerns for the successful licensing of the llrw disposal facility. The 123 acceptable findings were also reviewed by US Ecology to confirm their technical sufficiency. US Ecology continued to conduct environmental sampling and monitoring in anticipation of the release of the state reviewer's responses to the public comments they received and materials and testimony received during the February public hearing.

On August 6, 1998, Nebraska regulators announced in a press conference their "Intent to Deny" US Ecology's license application to construct, operate, and close a LLRW disposal facility in Butte, Nebraska. Public hearings were held in Naper, Nebraska,

November 9 and 10, 1998 and in Butte, Nebraska, November 11 and 12, 1998.

December 21, 1998, NDEQ and NDHHS regulators denied US Ecology's license application. The decision to deny the application cited six objections. All environmental monitoring activities at the Butte, Nebraska, site ceased as of December 31, 1998.

After the issuance of the denial decision, three major waste generators of the Region filed a lawsuit against the State, its agents and the Commission, claiming injury due to the "bad faith" review by the state regulators.

At the Commission's Mid-Year meeting January 13 and 27, 1999, various actions were taken in response to the denial decision by Nebraska regulators. Those actions included the initiation of cost-cutting measures and instruction to Commission's legal counsel and US Ecology to request a contested case hearing challenging the licensing decision. US Ecology filed petitions with the regulatory agencies on January 15, 1999. The Commission filed to intervene in the requested contested case hearings on January 19, 1999. Also in January 1999, the Commission asked counsel to

ask the Court to realign it as a plaintiff in the "bad faith" claims made by the major generators against the State of Nebraska.

US Ecology's Lincoln and Butte, Nebraska offices were closed March 31, 1999.

In April 1999, in U.S. District Court Judge Richard Kopf granted a preliminary injunction barring Nebraska from spending any additional money paid by waste generators in the Central Interstate Compact region on license review activities and halted the contested case proceedings.

In May 1999, Nebraska's legislature passed LB 530. The governor signed the Bill withdrawing Nebraska from the Central interstate Compact effective August 27, 1999. Commissioners voted at the June 1999 Annual Meeting to direct outside legal counsel to research the ramifications of Nebraska's withdrawal.

Rule 23 of the Central Interstate LLRW Compact Commission addresses the withdrawal of a compact member state. To comply with Rule 23, the Commission convened a special meeting on September 22, 1999 to provide the state the opportunity to explain its withdrawal. The State of Nebraska's presentation included

Legislative Bill 530 and the notice of withdrawal. A motion was made during the meeting requesting documents from the State of Nebraska for the Commission's use in determining if Nebraska acted in good faith as a compact member state and as the compact host state. The request stipulated a 120-day deadline. The meeting was recessed to continue at a future date to be determined by the Chair.

### **Project Status Update**

Outside legal counsel reported at the Annual Meeting of the Commission, held June 13, 2001, on the Rule 23 proceedings. The report indicated that a review of over 500 boxes had been completed, and that a "privilege log" had not yet been provided. The State's attorney indicated that a privilege log had been provided for the Federal litigation and a log would not be provided for the Rule 23 proceedings.

On May 29, 2001, the Commission received its first request for the production of documents in the lawsuit against Nebraska. The

Commission's production is ongoing.

### **Significant Events Recap**

#### **Commission Meetings**

- Special Telephone Meeting August 30, 2000

A Special Meeting was held via teleconference for the purpose of reviewing export applications submitted for fiscal year 2000-2001. Eight applications were reviewed and approved by the Commission.

- Mid-Year Meeting January 24, 2001

The Central Interstate LLRW Commission's Mid-Year meeting was held in Oklahoma City, Oklahoma. The Commission voted to approve four export applications, meeting minutes, reports, budget adjustments and the Financial Consultant's contract.

A panel discussion was held before the Commission as required by § 5.04 US Ecology Contract Review of Options and Alternatives. The panel

consisted of a representative of the utilities and a representative of US Ecology. Discussion centered around the closing of the Barnwell, SC disposal facility and the application for a Class B/C license by Envirocare of Utah. There was concern expressed regarding the potential effect the Barnwell closing may have for waste generators costs if Envirocare holds a monopoly on disposal options. Also discussed was the assured storage concept to which the representatives indicated that it was not a permanent disposal option but only a temporary fix. The site characteristics of an assured storage facility would be nearly identical to that of a permanent disposal facility.

Commission's legal counsel gave an update report on the current litigation and on the Rule 23 documents review. Commission's counsel made recommendations to the Commission at the Annual Meeting on how to proceed with Rule 23.

The State's attorney made a brief response to the Commission counsel's report on the subjects of the spoliation of evidence issue, the discovery issue and gap in Bates numbered documents for the Rule 23 issue.

The Commission voted to pay

\$5000 for membership to the re-organized Low-Level Waste Forum.

- Annual Meeting  
June 13, 2001

The Central Interstate Low-Level Radioactive Waste Commission Annual Meeting was held in Lincoln, Nebraska. The Commissioners approved four export applications for fiscal year 2000-2001, meeting minutes and heard reports.

Commission's counsel reported on current litigation and on Rule 23 with a recommendation to take no further action until a bill of particulars can be completed.

The US Ecology representative reported on the maintenance of the Butte Site and the mitigation permit issued by the Corps of Engineers that expires December 2001.

Changes to Rule 1 of the Commission Rules was approved by the Commission, granting a "split payment" option for those generators of waste in the major generator / utility category. The export fee schedule for fiscal year 2001-2001 was approved with an increase to all generator categories.

The Commissioners approved the Administrative Budget for

fiscal year 2001-2002 with the anticipated increase to legal fees.

Kansas Commissioner, James O'Connell, was elected as Chairman for the fiscal year. The Mid-Year meeting was tentatively scheduled for January 23, 2002, in Little Rock, Arkansas.

- Special Meeting  
July 13, 2001

A special teleconference meeting of the Commission was held to review export applications submitted by 20 generators. The Commission approved the applications for fiscal year 2001-2002.

The Commission also approved US Ecology's Funding Request for the fiscal year and US Ecology / Commission Contract Amendment 6 to provide technical support to legal counsel.

## **State Agencies**

U.S. District Judge Richard G. Kopf signed an order December 17, 1999 authorizing a computer expert to retrieve missing e-mail files from the

State of Nebraska's computers. Those files were included within the scope of discovery in the lawsuit against Nebraska. A special master was appointed and filed his report and recommendations with the court in June 2001. Judge Kopf issued a Memorandum and Order in the Commission's favor in August 2001 and imposing certain sanctions and potential limitations on Nebraska's defenses.

The State of Nebraska made their first request for Commission documents relating to the Federal lawsuit in March 2001 and in June 2001 the review of the Commission's documents began.

## Legislature

- Community Improvement Cash Funds Legislation

This law, authorized and established in 1987, ensures continued funding assistance for the Village of Butte (Host Community) and a number of other local political subdivisions in Boyd County, which are impacted by the selection of the proposed disposal facility site. Annual amounts of \$75,000 each are provided by the states of Arkansas, Kansas, Oklahoma, and

Louisiana. No new legislation was introduced.

## NDEQ 2000 Annual Report

The Low-Level Radioactive Waste Program (LLRW Program) was created to administer the Nebraska Department of Environmental Quality's (NDEQ) responsibilities as outlined in Nebraska State Statute through the Low-Level Radioactive Waste Disposal Act. The LLRW Program is a cooperative effort of NDEQ and the Nebraska Department of Health and Human Services (NDHHS).

The LLRW Program historically administered aid to the Local Monitoring Committee and the Community Improvement Fund from funds collected from the developer. The NDEQ Annual Report to the Legislature, submitted December 1, 2000, reported that no funds have been collected from US Ecology for this purpose. The Department has paid LLRW Program expenses from the State's general fund budget. The report indicates that the actual funds expended in fiscal year 2000 totaled \$3,218,455 for the Low Level Radioactive Waste Program.

## Developer-US Ecology

US Ecology continues to serve the Commission in a number of areas important to continued viability of the Butte project.

By monitoring proposed and implemented laws and regulations which may impact the License Application and other project requirements.

By controlling weeds and otherwise maintaining the condition of the Butte site, providing periodic site surveillance, promoting appropriate vegetation growth, and checking water levels in a wetland area for possible closure of two remaining wells.

By providing timely information to Commission legal counsel in support of ongoing litigation issues.

US Ecology changed it's Funding Request period during the July 2000 Commission meeting to be consistent with the Commission's Fiscal Year budgeting schedule. The US Ecology budget approved at that meeting identified tasks for Site Maintenance and Surveillance, Professional Consulting Services by US Ecology's former Nebraska

Project Manager, storage costs for geologic core samples, property taxes, administrative costs and travel expenses.

The Funding Request for Fiscal Year 2002 contains similar tasks but with increased costs for Professional Services and the addition of costs for certain subcontractor support requested of Bechtel National, Inc. These two subtasks are directly associated with providing Commission legal counsel with information relevant to the discovery process, depositions and trial preparation.

The Developer's Report for Fiscal Year 2001 noted the continuation of the Army Corps of Engineers Wetland Mitigation Permit until December 2001. US Ecology's consultant continues to monitor proposed legislation, administrative and judicial proceedings which may affect the Mitigation Permit and will take those actions needed to ensure that mitigation work can go forward at the appropriate time.

US Ecology has continued to provide its services to the Commission in a fiscally

prudent manner by performing all necessary tasks under budgeted amounts. The Commission's contractor has further agreed to pass through Bechtel litigation support costs to the Commission with no added mark-up.

## Waste Report

This year's Waste Survey was included in the Commission's mailing of the 2001-2002 export applications. For the first time, the survey and application forms were also made available on the Commission's website at [www.cillrwcc.org](http://www.cillrwcc.org).

Sixteen shippers responded to the survey upon applying for export authorization. Respondents included 2 medical facilities, 2 research facilities; 4 higher education facilities, 4 industrial facilities, and 4 utilities.

Of the commercial disposal facilities available, the Barnwell, South Carolina, disposal facility is the most frequently used with 11 respondents reporting use of this facility. Two respondents use Chem-Nuclear and 5 ship waste to

Envirocare.

Four years is the average length of time reported for on-site storage capacity if generators were unable to ship waste for disposal. Of those reporting an approximate cost if they were required to store their waste, the average reported was \$90,000. The average cost of low-level radioactive waste management is \$700,000 among those who reported their annual costs. The two points of concern among all reporting generators were the increasing costs and disposal capacity in the future. A sampling of specific comments by non-major generator category respondents are as follows:

- although volumes are decreasing, permit costs keep rising. Have seen no tangible benefits from increased administrative permit fees.
- will we always have a disposal facility available to us
- That there will not be sufficient future capacity or that prices will continue to increase.
- Where will members of this compact be able to dispose wastes and what are the costs. What legal action against Nebraska is

**Export Applications for FY01-02 can now be accessed through the Commission's Web Page @ [www.cillrwcc.org](http://www.cillrwcc.org)**

**The next meeting of the Commission is tentatively scheduled for January 23, 2001 and is to be in Little Rock, Arkansas**

being undertaken?

- I am concerned that we continue to generate waste, but refuse construction permits for an appropriate site in Nebraska.
- would prefer to have site within our compact
- cost and site availability
- We hope to eliminate dilution as a means of disposal and would hope that commercial facilities would continue to provide ground/above ground burial. I am not sure that such is true of Envirocare and the vitrification process, etc.

- availability of a disposal site

Twenty-seven export applications have been approved for fiscal year 2000-2001.

Disposal information included in this report is from the Idaho National Environmental Engineering Laboratory's Manifest Information Management System. ([www.mims.inel.gov](http://www.mims.inel.gov))

### Information and Education

The Commission maintains a mailing list of individuals and organizations interested in Commission activities. Commission meetings are open to the public and meeting announcements, materials, Annual Reports are distributed to interested persons and groups. The Commission's office responds to various requests for information that are received.

The Commission has a variety of Fact Sheets, brochures, position papers, and other information available, including project-specific brochures.

The Commission's web page be-

States	Volume (ft <sup>3</sup> )	Activity (curies)	Number of Shipments
Arkansas	5628.97	2.98	87
Kansas	1121.85	983.66	67
Louisiana	7618.51	64660.19	138
Nebraska	3115.06	664.38	59
Oklahoma	156.60	<.01	4
<b>2000/2001 Total</b>	<b>17740.99</b>	<b>66311.21</b>	<b>355</b>

came operational in late 1996. Items contained on the Commission's web page are newsletter articles, Annual Reports, minutes of Commission meetings, notices of meetings, legal summaries and other appropriate information.

The web site may be accessed at <http://www.cillrwcc.org>.

### Other Points of Interest

The Bush administration has estimated that 1300 new power plants will need to be built over the next 20 years to meet electricity demands, but NRC Chairman Richard Meserve told senators that the lack of disposal sites would mean a large increase this decade in storage at power plants. Legislation has been introduced that calls for new nuclear power plants to be built on existing DOE sites and other legislation was introduced that calls for the development of a state-owned privately licensed and operated assured isolation facility as a low-level radioactive waste management alternative.

Officials of the Southwest Low-Level Radioactive Waste Commission voted unanimously to address Governor Gray Davis regarding California's obligations to the compact and in

June, the U.S. Supreme Court denied the Southeast Compact's motion to file a bill of complaint made against the State of North Carolina. The Southeast Compact continues to consider its options

In August 2000, Utah officials started proposing that surcharges be imposed on all radioactive waste entering the state for disposal if Envirocare's Class B/C license is approved. In November, the Utah Radiation Control Board declared that Envirocare of Utah's application to receive and dispose of containerized Class A, B, and C low-level radioactive waste was complete. The Utah House approved legislation in March 2001 that imposes heavy taxes on doing business with the spent-fuel industry and prohibits any county from providing services to such a facility. In July, the Utah Division of Radiation Control issued its final technical decision to approve Envirocare's license application despite Envirocare's decision to shelve the project due to changes in the disposal market and political opposition. The 30-day public comment period was still held and three appeals were filed. If Envirocare had not shelved the project, the application would have moved to the legislature and the Governor for approval

during the next legislative session which begins January 15, 2002.

Disposal space at Chem-Nuclear's Barnwell facility in South Carolina has been allocated. The allocation system set forth by the South Carolina Budget and Control Board's Radioactive Waste Disposal Program began July 1, 2001. The system is comprised of a 7,000 cubic-foot designated for Atlantic Compact generators; a 36,500 cubic-foot fixed pool for non-compact generators; and a 36,500 cubic-foot variable pool for non-compact waste. The variable pool is intended to give Chem-Nuclear and generators flexibility for unseen disposal needs and use will be determined case-by-case. Out-of-compact generators are designated space in the fixed pool based on an allocation formula. The state requires generators to pay for the disposal space allocated to them whether they use it or not. Generators may be able to return any allocated portion without penalty by January 1, 2002. After January 1, 2002, generators are able to return space without penalty if the space can be immediately reallocated.

## Summary of Litigation

During the Commission's existence, it has been in litigation many times, and has been successful in defending its legal position. Most recent and current litigation is summarized below. Visit our web site ([www.cillrwcc.org](http://www.cillrwcc.org)) for details of past litigation.

**State of Nebraska v. Central Interstate Low-Level Radioactive Waste Commission** (United States District Court for the District of Nebraska, Case No. 4:CV963438).

The Central Interstate Low-Level Radioactive Waste Commission at a meeting on September 30, 1996, passed resolutions after receiving evidence calling for the State of Nebraska to issue its initial draft decision and documents on the license application no later than January 14, 1997, and also calling for a consolidation of the hearing process after the draft decision. The State of Nebraska sued the Commission, claiming that it was entitled to a federal declaratory judgment that the Commission lacks authority to set any schedule for the remainder of the license application review currently underway in the Departments, and that even if it had such authority, the dates set were unreasonable.

Major generators Wolf Creek and Entergy were allowed by the Court to intervene, over Nebraska's objection. Trial was held before Judge Urbom during July, 1998. The parties submitted written closing arguments and briefed some issues at Judge Urbom's request. On October 15, 1998, Judge Urbom entered judgment in favor of the Commission. His 18-page opinion held that the Commission had the authority to pass its September 30 motion imposing a decision deadline, and that the deadline contained in the motion was reasonable. Nebraska appealed this decision to the Eighth Circuit Court of Appeals.

On August 16, 1999, the Eighth Circuit filed an opinion affirming the judgment entered by Judge Urbom. The Eighth Circuit determined that the Commission had authority to pass the deadline. The Court decided that the issue of the reasonableness of the deadline was moot, because the State had made a license decision after the lower court judgment was entered but before the appeal was decided. However, in a footnote the Eighth Circuit said, "Without addressing the issue directly, we believe, in any event, that the deadline established by the Commission was responsible." The State did not try to take the case to the U.S. Supreme Court, so this matter is now completed.

**State of Nebraska v. Central Interstate Low-Level Radioactive Waste Commission** (United States District Court for the District of Nebraska, Case No. 4:CV973267).

In June and July, 1997, the Commission approved waste export applications made by a number of Major Generators. Nebraska's Commissioner voted "No" on each application, contending that Art. IV(m)(6) of the Compact gives the Host State veto authority over all export of waste from the region. On advice of counsel, the Commission determined that Nebraska's claimed "Veto" authority did not apply to the export applications before it, and approved the applications on a 4-1 vote.

In mid-August, 1997, Nebraska sued the Commission, seeking a declaration that the export permits issued by the Commission in June are invalid and that the affirmative vote of the Nebraska Commissioner is required before the Commission can authorize any export of waste from the region. Although the Commission took no action regarding importation of waste to the region, Nebraska's suit seeks a declaration that the affirmative vote of Nebraska's Commissioner is required before the Commission can authorize importation of any waste into the region. On September 13, 1997, Nebraska amended its complaint to include the export applications approved by the Commission in July, 1997.

The Commission asked that the case be dismissed unless the waste exporters whose applications were challenged by Nebraska's Commissioner were made parties. The Court rejected that motion, and the Commission answered the complaint. A short trial was held on October 2, 1998.

On November 23, 1998, Judge Kopf issued a Memorandum and Judgment in favor of the Commission. The opinion holds that Nebraska does not have veto power over export applications, and refuses to decide issues related to future import issues. On December 8, 1998, Nebraska filed a motion for new trial, which was overruled and Nebraska has appealed to the Eighth Circuit Court of Appeals. On April 4, 2000, the appellate court affirmed the entire ruling and the case is now completed.

**U.S. Ecology, Inc., and Central Interstate Low-Level Radioactive Waste Commission, Contested Case Proceeding over License Denial** (Departments of Environmental Quality and Health and Human Services of Nebraska).

After the two departments announced their denial of a license on December 18, 1998, US Ecology filed a contested case proceeding before the two departments, and the Commission intervened as an interested party, with both US Ecology and the Commission seeking a reversal of the license denial. The attorneys for the two departments, however, then filed an answer in which they said that the issues of political influence over the license decision could not be decided in this proceeding for "lack of subject matter jurisdiction." A preliminary hearing was held before the hearing examiner, former Nebraska Chief Justice C. Thomas White, at which point the Commission announced that the major generators and the Commission would be seeking to enjoin any further proceedings in the contested case hearing because of the limitations being placed on it by the departments. Subsequently, in the lawsuit filed by the major generators and the Commission against the State of Nebraska and others, which is described in the following paragraph in this memorandum, United States District Judge Richard Kopf entered first a temporary restraining order and then a preliminary injunction against the contested case proceedings going any further. That preliminary injunction was entered on April 16, 1999. It both halted the contested case hearing and also prevented the State of Nebraska from billing the Commission, US Ecology, or the major generators in any way for the legal costs involved in the contested case proceeding or in the costs of the federal law itself. Therefore, at least until trial of the federal case, now expected in 2002, there will be no further action in the contested case proceeding. The State appealed the preliminary injunction, but it was sustained by the U.S. Court of Appeals for the Eighth Circuit on April 12, 2000. The State did not then seek to take the issue to the U.S. Supreme Court.

**Entergy Arkansas, Inc. [and all other major generators except NPPD] and Central Interstate Low-Level Radioactive Waste Commission and US Ecology v. State of Nebraska [and several individual defendants]** (United States District Court for the District of Nebraska, Case No.: 4:98CV3411)

In this case, which was filed by the major generators in late December, 1998, the claim was made by those original plaintiffs against the State of Nebraska, the directors of the Departments of Health and Human Services and Environmental Quality, and against the program director for the low-level radioactive waste program, Jay Ringenberg, and others, that the licensing proceeding was politically influenced and the denial was invalid. The plaintiffs also named the Central Interstate Low-Level Radioactive Waste Commission as a defendant, subject to realignment by the court since the Commission's position was much more likely to be aligned with the plaintiffs than the defendants. The claims by the generators were that the State of Nebraska, under color of state law, had denied the civil rights of the plaintiff generators in various respects, and also that the plaintiff generators were essentially intended beneficiaries of the compact between the states, and that bad faith on the part of the State of Nebraska had caused them tremendous damages.

Shortly thereafter, the Commission, at its January 1999 meeting, authorized its outside counsel to ask the Court to realign it as a plaintiff and essentially join in the claims originally made by the major generators. That has been done, and the Commission, in its own claim against the State of Nebraska, contended that Nebraska had operated in bad faith in violation of the compact which is both a federal law and has the characteristics of a contract between parties. A temporary injunction was obtained by the plaintiffs preventing any of the defendant parties from destroying any documents, and that has been communicated to all the State officials involved. The plaintiffs, including the Commission, then moved for a temporary restraining order and then a preliminary injunction against the State of Nebraska and the other defendants, prohibiting them from continuing with the contested case proceeding, and also prohibiting them from trying to charge the costs of any aspect of the low-level radioactive waste activities against the plaintiffs. The allegation was that more than \$75 million had been spent on the project by the original plaintiffs in this action (not counting the additional \$20 million or so spent by NPPD which has not joined in the case), and that allowing the State to continue charging everything to the plaintiffs was simply a continuation of the bad faith and illegality of Nebraska's approach to its role as the host state. The Commission joined in all those motions for injunctive relief.

On April 16, 1999, United States District Judge Richard Kopf granted the preliminary injunction, making extensive findings of probable bad faith by Nebraska in a 38-page opinion. The requirements for preliminary injunctive relief include a finding of probable ultimate liability, and the Court therefore was obliged to make that call and found very substantial and itemized evidence of various bad faith and political influence on the licensing proceeding. The State appealed the preliminary injunction; the Commission and the State filed their briefs, oral argument was held, and on April 12, 2000 the United States Court of Appeals affirmed Judge Kopf's decision in its entirety. The defendants, including the State of Nebraska, also had filed a motion with Judge Kopf on similar arguments to dismiss the lawsuit, largely on the basis of Nebraska's claim of sovereign immunity against any such relief as the Court might grant. Judge Kopf overruled the motion, and this decision was also appealed to the Eighth Circuit. On March 8, 2001, the Court of Appeals affirmed as to the Commission (the Court remanded for further district court consideration some of the claims made by the other plaintiffs). After the Eighth Circuit denied Nebraska's request for rehearing, Nebraska filed a petition for certiorari, asking the U.S. Supreme Court to reverse the Court of Appeals. The Commission has opposed the certiorari request. A decision by the Supreme Court whether or not it will consider Nebraska's appeal is expected soon after commencement of the Court's new term in October, 2001. In the meantime, discovery continues in the district court. If the Supreme Court agrees to hear the case, it may enter an order stopping proceedings in the district court until it decides the appeal.

In December, 1999, the State advised the Court and plaintiffs that it had failed to comply with an injunction entered by the Court at the inception of the case. That injunction required all of the parties to preserve all relevant evidence, including any documents or other items stored in computers. The State has reported to the Court that the backup tapes for the State's mainframe computer were "recycled," from January through September, 1999, and that such recycling resulted in the loss of information stored in the backup tapes. The Court appointed both a Special Master and computer expert to inquire into the possible spoliation of evidence. Over the past year, the parties and Special Master have attempted to determine the scope of the destroyed documentation and who bears responsibility for the State's apparent failure to comply with the Court's order.

The Special Master issued his report and recommendation on June 22, 2001. He found that the State violated the Court's evidence preservation order, but that such violation was not intentional. He recommended various sanctions against the State, including that the State pay all attorneys fees incurred by all of the parties in connection with the spoliation inquiry. Nebraska has objected to a small portion of the report and recommendation; Judge Kopf heard argument on the spoliation issue at a hearing on August 22, 2001. He then adopted the Special Master's recommendations with only minor changes.

In October, 2000, the Court granted the Commission's motion to compel production of various documents requested from the State by the Commission. The State attempted to have that order vacated or stayed by both the Eighth Circuit Court of Appeals and the United States Supreme Court; both of those Courts denied the State's request. Based on the Court's October order, general discovery in the main case has now commenced.

The Court recently held a status conference and established deadlines for the completion of the litigation. Discovery is to be completed by March of 2002, and trial is scheduled for approximately three weeks during June, 2002.

Judge Kopf has now dismissed parts of the major generator's claims under the Civil Rights Acts. The major generators however remain in the case on their claim for reimbursement of moneys spent on the licensing as related costs.

**STATUS OF COMMISSION FUNDS**  
as of June 30, 2001

**Rebate Funds** (held in certificate of deposits)

Rebate funds can only be spent to:

1. establish low-level radioactive waste disposal facilities;
2. mitigate the impact of low-level radioactive waste disposal facilities on host state;
3. regulate low-level radioactive waste disposal facilities; or
4. ensure the decommissioning, closure, and care during the period of institutional control of low-level radioactive waste disposal facilities.

Commission's rebate funds not obligated (CIC Acct) \$0 .00 <sup>Principal</sup>

No longer is required to report the expenditures to the Department of Energy. The Commission tracks, but no longer reports to DOE the use or expenditure of the interest the CIC earns on the rebate funds.

Commission's "Guaranty Fund" rebate case settlement funds obligated (CIC Acct) \$829,461 <sup>Rebate Funds</sup>

Commission's \$900K in Guaranty Fund is for the sole purpose of guaranteeing timely payment to the state for licensing costs billed to US Ecology; and no lon reports annually the expenditures to the Department of Energy.

\$ 70,539 <sup>Interest</sup>

\$900,000 <sub>Total</sub>

Major Generator money in the "Guaranty Fund" is \$100,000 and the Commission is the custodian of the funds for the sole purpose of guaranteeing timely payments to the state for licensing costs billed to US Ecology.

**Commission Expense Report for Fiscal Year 2000-2001 and Budget for Fiscal Year 2001-2002**

Expense	FY98-99	FY99-00	FY00-01 Budget (1)	FY00-01 Actual	FY01-02 Budget
Salaries & Benefits	147,475	69,796	70,776	70,649	80,748
Rent	33,187	27,773	29,000	27,652	29,000
Telephone	6,279	5,328	6,000	4,721	6,000
Postage	2,385	1,189	2,000	1,215	1,500
Copy & Printing	570	130	500	40	500
Machine Lease & Maintenance	8,565	4,990	3,500	2,515	4,000
Meeting Transcriptions	3,645	1,826	2,000	1,163	4,000
Dues & Subscriptions	312	277	6,000	5,958	6,000
Office Equipment & Supplies	3,334	4,202	5,000	4,626	5,000
Travel & Meeting Expense	11,063	9,252	6,000	4,596	9,000
Insurance	3,578	3,982	3,500	3,340	3,500
Accounting	27,906	36,671	22,000	20,925	23,000
Legal Fees	302,761	277,550	446,000	430,073	800,000
Miscellaneous	68	0	500	34	500
Project Manager	42,275	22,800			
Cash Reserve					
Butte Site Maintenance / USE Consult		17,388	34,000	25,599	208,500
<b>Total</b>	<b>596,403</b>	<b>483,154</b>	<b>636,776</b>	<b>603,406</b>	<b>1,181,248</b>
(1) Amended June 13, 2001					

**CENTRAL INTERSTATE LOW-LEVEL  
RADIOACTIVE WASTE COMMISSION**

Financial Statements

June 30, 2001 and 2000

(With Independent Auditors' Report Thereon)

## Independent Auditors' Report

The Commissioners  
Central Interstate Low-Level  
Radioactive Waste Commission:

We have audited the accompanying balance sheets of the Central Interstate Low-Level Radioactive Waste Commission (Commission) as of June 30, 2001 and 2000, and the related statements of revenues, expenses, and retained earnings and cash flows for the years then ended. These financial statements are the responsibility of the Commission's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Central Interstate Low-Level Radioactive Waste Commission as of June 30, 2001 and 2000, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated July 25, 2001 on our consideration of the Commission's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grants. That report is an integral part of an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

**KPMG LLP**

**CENTRAL INTERSTATE LOW-LEVEL  
RADIOACTIVE WASTE COMMISSION**

Balance Sheets

June 30, 2001 and 2000

Assets	<u>2001</u>	<u>2000</u>
Current assets—		
cash, primarily interest-bearing accounts	\$ <u>278,835</u>	<u>462,651</u>
Restricted assets:		
Rebate fund, certificates of deposit	101,917	440,991
Guarantee fund, certificates of deposit	1,000,000	1,000,000
Project fund—		
cash, interest-bearing account	<u>13,456</u>	<u>13,456</u>
Total restricted assets	<u>1,115,373</u>	<u>1,454,447</u>
Property and equipment	81,337	78,429
Less accumulated depreciation	<u>75,841</u>	<u>72,389</u>
Net property and equipment	<u>5,496</u>	<u>6,040</u>
Total assets	<u>\$ 1,399,704</u>	<u>1,923,138</u>
<b>Liabilities and Retained Earnings</b>		
Liabilities:		
Current liabilities:		
Accounts payable	\$ 184,046	25,601
Accrued expenses	<u>7,428</u>	<u>4,668</u>
Total current liabilities	191,474	30,269
Unearned export application fees	<u>13,125</u>	<u>347,125</u>
Total liabilities	204,599	377,394
Retained earnings	<u>1,195,105</u>	<u>1,545,744</u>
Total liabilities and retained earnings	<u>\$ 1,399,704</u>	<u>1,923,138</u>

See accompanying notes to financial statements.

**CENTRAL INTERSTATE LOW-LEVEL  
RADIOACTIVE WASTE COMMISSION**

Statements of Revenues, Expenses, and Retained Earnings

Years ended June 30, 2001 and 2000

	<u>2001</u>	<u>2000</u>
Revenues:		
Commission member fees	\$ 125,000	125,000
Export application fees	394,875	306,950
Other	1,162	156
	<u>521,037</u>	<u>432,106</u>
Total revenues		
Operating expenses:		
Salaries and benefits	73,409	69,796
Professional services	505,761	338,409
Office and administrative	19,522	17,994
Rent	27,652	27,773
Travel	4,597	9,252
Depreciation	3,452	3,698
US Ecology site maintenance	20,038	9,524
US Ecology consulting	13,017	—
Refund to major generators	300,000	—
Other	—	242
	<u>967,448</u>	<u>476,688</u>
Total operating expenses		
Loss from operations	(446,411)	(44,582)
Interest income	95,772	73,035
Net revenue (loss)	(350,639)	28,453
Retained earnings, beginning of year	<u>1,545,744</u>	<u>1,517,291</u>
Retained earnings, end of year	<u>\$ 1,195,105</u>	<u>1,545,744</u>

See accompanying notes to financial statements.

**CENTRAL INTERSTATE LOW-LEVEL  
RADIOACTIVE WASTE COMMISSION**

Statements of Cash Flows

Years ended June 30, 2001 and 2000

	<u>2001</u>	<u>2000</u>
Cash flows from operating activities:		
Loss from operations	\$ (446,411)	(44,582)
Adjustments to reconcile loss from operations to cash used in operating activities:		
Depreciation	3,452	3,698
Changes in assets and liabilities:		
Accounts receivable	—	17,379
Community improvement fees payable	—	(75,000)
Other current liabilities	161,205	(77,882)
Unearned export application fees	(334,000)	43,175
Total adjustments	<u>(169,343)</u>	<u>(88,630)</u>
Net cash used in operating activities	<u>(615,754)</u>	<u>(133,212)</u>
Cash flows from investing activities:		
Interest received on cash and certificates of deposit	95,772	73,035
Sales (purchases) of certificates of deposit	339,074	(54,425)
Net purchases of property and equipment	<u>(2,908)</u>	<u>(1,674)</u>
Net cash provided by investing activities	<u>431,938</u>	<u>16,936</u>
Net decrease in cash	(183,816)	(116,276)
Cash and interest-bearing accounts, at beginning of year	<u>476,107</u>	<u>592,383</u>
Cash and interest-bearing accounts, at end of year	\$ <u><u>292,291</u></u>	<u><u>476,107</u></u>
Reconciliation to balance sheets:		
Cash	\$ 278,835	462,651
Project fund cash	<u>13,456</u>	<u>13,456</u>
Total cash and interest-bearing accounts, at end of year	\$ <u><u>292,291</u></u>	<u><u>476,107</u></u>

See accompanying notes to financial statements.

## Notes to Financial Statements

June 30, 2001 and 2000

(1) **Organization**

The Central Interstate Low-Level Radioactive Waste Commission (Commission) was established in 1984 by an interstate compact among the states of Arkansas, Kansas, Louisiana, Nebraska, and Oklahoma with consent of Congress through the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act. The purpose of the Commission is to carry out the mandate of the Central Interstate Low-Level Radioactive Waste Compact by providing for and encouraging the safe and economical management of low-level radioactive wastes within the compact region.

The Commission is an instrumentality of the compact member states and as such, is exempt from Federal and state income taxes under Section 115 of the Internal Revenue Code.

(2) **Summary of Significant Accounting Policies**

***Basis of Accounting***

The accompanying financial statements are prepared on the accrual basis and reflect assets and liabilities owned by the Commission and the results of the Commission's operations.

The Commission applies all applicable Financial Accounting Standards Board Statements and Interpretations, Accounting Principles Board Opinions, and Accounting Research Bulletins except for those that conflict with or contradict Government Accounting Standards Board's (GASB) pronouncements.

***Revenue Recognition***

**a) *Funding from Major Generators***

The major generators provide funding for the siting, licensing, development, and construction of the facility. Revenues are recognized as expenses are incurred. Construction and development of the project is currently on hold (see note 6). Therefore, the Commission did not receive funding from the major generators for the years ended June 30, 2001 and 2000.

**b) *Export Application Fees***

Fees for approval to export waste are recorded as revenue when earned.

***Property and Equipment***

Property and equipment consists of furniture, fixtures, and equipment recorded at cost. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets of three to five years.

### ***Restricted Assets***

The source of the project fund is from six major generators which are providing funding for the low-level radioactive waste disposal project under an agreement with the Commission (see note 4). The six major generators are Arkansas Power and Light Company, Gulf States Utilities Company, Louisiana Power and Light Company, Nebraska Public Power District, Omaha Public Power District, and Wolf Creek Nuclear Operating Corporation. The agreement specifies the project funds provided by the major generators are to be used only to reimburse US Ecology, Inc. (US Ecology) for project costs incurred as defined in Section 4.01 of the Commission's contract with US Ecology. The use of interest earned on the project fund is not restricted.

Use of the rebate fund is restricted to payment of certain costs incurred to establish the low level waste facility or mitigate the impact of low level radioactive waste disposal facilities on the State of Nebraska.

The Commission has agreed to guarantee payment by US Ecology of certain licensing activity costs incurred by the State of Nebraska. Related to this guarantee, the Commission is obligated to create and maintain a segregated restricted account with a balance of \$1,000,000 for a guarantee fund, if needed, for payment of the State of Nebraska's licensing expenses and payments to its contractors in the license application and review process, should US Ecology default on prelicensing payments to the State of Nebraska. On July 12, 1996, the Commission transferred \$600,000 to the guarantee fund from rebate funds. The major generators also deposited \$400,000 in the Commission guarantee fund on July 12, 1996. On June 28, 2000 the Commission voted to return \$300,000 to the major generators and on July 7, 2000 made the refund. The Commission transferred, on that same date, \$300,000 of additional rebate funds with accrued interest to the guarantee fund. Commission management believes that presently no circumstances exist to cause the use of monies in the guarantee fund for payment of licensing costs incurred by the State of Nebraska. At the end of the prelicensing period, when the license decision is final, the guaranty provisions expire. When that date approaches and any remaining anticipated costs of the licensing activities are determined and paid, the \$100,000 deposited in the guarantee fund shall be released to the major generators. The remaining \$900,000 may then be used by the Commission for any legal purpose.

The interest income earned on the \$100,000 deposited in the guarantee fund by the major generators is remitted directly to the major generators. The interest income earned on the remaining \$900,000 is periodically transferred to the rebate fund.

### ***Use of Estimates***

Management of the Commission has made a number of estimates and assumptions relating to the reporting of assets and liabilities to prepare these financial statements in conformity with accounting principles generally accepted in the United States of America. Actual results could differ from those estimates.

### ***Reclassification***

Certain balances from 2000 have been reclassified to conform with the current year presentation.

### **(3) Cash and Certificates of Deposit**

At June 30, 2001 and 2000, the Commission had cash and certificates of deposit of \$1,394,208 and \$1,917,098, respectively. At June 30, 2001, administrative, community improvement, and project funding accounts included demand deposits of \$3,024, which were covered by FDIC deposit insurance. Also at June 30, 2001, administrative, community improvement, and project funding accounts included \$289,267 invested in short-term federal investment trust accounts backed by the full faith of the federal government. At June 30, 2000, administrative, community improvement, and project funding accounts included demand deposits of \$58,242, which were covered by FDIC deposit insurance. Also at June 30, 2000, administrative, community improvement, and project funding accounts included \$417,865 invested in short-term federal investment trust accounts backed by the full faith of the federal government. At June 30, 2001 and 2000, rebate fund certificates of deposit of \$100,000 were covered by FDIC deposit insurance and the remaining \$1,001,917 and \$1,340,991, respectively, were collateralized by government securities/agencies held in joint custody at the federal reserve, by the pledging bank, in the Commission's name.

### **(4) Contractual Agreements**

The Commission has an agreement with US Ecology for the design, development, construction, operation, and eventual decommissioning of a facility for the disposal of low-level radioactive waste. The agreement specifies eight project phases from identification of a host state and preparation of a siting plan to closure and post closure of the facility.

Current funding for the siting, licensing, development, and construction of the facility is being provided by six major generators under separate agreement and, in part, through equity contributions from US Ecology. Equity contributions were accomplished by US Ecology through credits on billings to the Commission for the facility. The Commission entered into the agreement to provide necessary funding for the project with the major generators.

### **(5) Contingencies**

In December 1998, the State of Nebraska denied US Ecology's license to build and operate the facility. In June 1999, Nebraska passed a law which would withdraw Nebraska from the Compact effective in August 1999. Nebraska would remain a member for up to five years after their notice to withdraw is submitted to the Commission. The Compact has joined in a lawsuit with the major generators and US Ecology against the State of Nebraska for licensing of the site or damages, or both, for a bad-faith denial by Nebraska. The Commission seeks not only repayment of the funds spent as damages in this case, but also prejudgment interest from the date of its payments as well as attorneys' fees incurred in pursuing this case and other forms of legal or equitable relief the court feels is appropriate in the event it ultimately finds Nebraska has been in bad faith. The ultimate judgment, estimated at up to \$200 million, is not accrued.

**Independent Auditors' Report on Compliance and on Internal Control  
Over Financial Reporting Based on an Audit of Financial Statements  
Performed in Accordance with Government Auditing Standards**

The Commissioners  
Central Interstate Low-Level  
Radioactive Waste Commission:

We have audited the financial statements of Central Interstate Low-Level Radioactive Waste Commission (the Commission) as of and for the year ended June 30, 2001 and have issued our report thereon dated July 25, 2001. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

***Compliance***

As part of obtaining reasonable assurance about whether the Commission's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

***Internal Control Over Financial Reporting***

In planning and performing our audit, we considered the Commission's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses.

This report is intended solely for the information and use of the Commissioners, and the Commission management and is not intended to be and should not be used by anyone other than these specified parties.

**KPMG LLP**

July 25, 2001