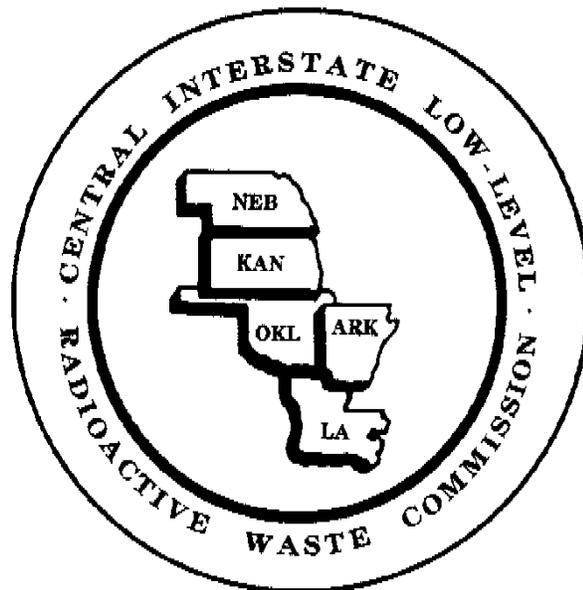


Central Interstate Low-Level Radioactive Waste Commission



**Annual Report
2002-2003**

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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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 Regulation & Licensure 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 are 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 along with other materials at the Commission's special meeting on August 27, 1996 but did not directly participate in the meeting.

At the 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

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.

On 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's regulators.

At the Commission's Mid-Year meeting, held in January 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 and the Commission filed to intervene in the requested contested case hearings. Also in January 1999 the Commission realigned itself as a plaintiff in the 'bad faith' claims made by

the major generators against the State.

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.

Rule 23 of the Central Interstate LLRW Compact Commission addresses the withdrawal of a compact member state and 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.

Outside legal counsel reported at the 2001 Annual Meeting of the Commission 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 separate log would not be provided for the Rule 23 proceedings.

In June 2001 the State of Nebraska began its review of the Commission's central file and identified over 100,000 pages to be provided in the Federal litigation discovery efforts.

The Eighth Circuit Court of Appeals upheld the US District Court's decision not to dismiss the litigation on Nebraska's claim of sovereign immunity.

The Major Generators' civil rights claims were barred by sovereign immunity by the Court but were allowed to remain in the litigation as a

third party complaint against the Commission.

The trial began June 3, 2002 and continued for approximately eight weeks.

Project Status Update

Commission received a favorable decision in the 'bad faith' lawsuit on September 30, 2002. The decision, handed down by U.S. District Court Judge Kopf awarded the sum of \$151,408,240.37 plus post-judgment interest. It did not, however, grant Commission's request of an appointment of a special master for an independent review of the license application. In October, the State of Nebraska appealed the Court's decision. The Eighth Circuit Court of Appeals heard oral arguments on June 12, 2003.

Also in October 2002 the Commission held a meeting at which it voted to formally ask the State of Nebraska to voluntarily agree to cede its Agreement State Status to the Nuclear Regulatory Commission with respect to the licensing and regulation of a low-level radioactive waste disposal facility that may be located within the state. Nebraska refused the request and at the January 2003

meeting of the Commissioners a resolution was adopted to notify the U. S. Nuclear Regulatory Commission and the State of Nebraska of the Commission's intent to seek by petition revocation of that portion of the Nebraska's Agreement State Status. The resolution also advised that no formal procedure to revoke be initiated until after the completion of the Federal litigation.

The Commissioners also voted to reconvene the Rule 23 Proceeding that began in 1999 upon receipt of Nebraska's decision to withdraw from the Compact at the January 2003 meeting. Nebraska was given a 60-day period to submit evidence of 'good faith', which the Commissioners formally received at the April 10, 2003 meeting. Deliberation took place in open session at the June 25, 2003, Annual Meeting. The Commission listed 13 particulars and voted 4-1 to revoke Nebraska's membership and to impose sanctions with an effective date of one year from notification. On August 22, 2003, the State of Nebraska filed a complaint in U.S. District Court contesting the Commission's actions.



Commission Meetings

- Special Telephone Meeting October 23, 2002

A special meeting was held via teleconference. Seven applications to export llrw from the Central States Region for fiscal year 2002-2003 were approved by the Commission.

The Commission passed a resolution by a 4-1 vote to formally request that the State of Nebraska voluntarily agree to cede its Agreement State regulatory power to the Nuclear Regulatory Commission with respect to the licensing and regulation of a low-level radioactive waste disposal facility that may be located within its borders. The resolution instructed the Chairperson to prepare the appropriate request letter and to include a response date of December 31, 2002, and that the issue should be placed on the agenda of the January meeting for further consideration. The Commissioner from Nebraska proposed an alternative resolution that would essentially

halt the Commission's actions until the federal litigation is complete. The proposed resolution did not receive a second.

Nebraska's attorney commented on the resolution by stating that Nebraska would not cede authority to the Nuclear Regulatory Commission and that the State intended to file its appeal of the district court's judgment awarding the Commission \$151 million.

- Mid-Year Meeting January 22, 2003

The Central Interstate LLRW Commission's Mid-Year meeting was held in Overland Park, Kansas on January 22, 2003. The Commission voted approval of one export application, meeting minutes, budget adjustments, KPMG Audit for fiscal year 2001-2002, membership to the LLW Forum, and the Financial Consultant's contract.

No formal panel assembled for discussion on the required § 5.04 US Ecology Contract Review of Options and Alternatives and no issues were presented for discussion by the Commissioners or public.

The Commission received oral reports from the Commission's Administrator, Outside Legal

Counsel and US Ecology. The Host State representative read into the record a letter written by Nebraska's Special Assistant Attorney General regarding the state's opposition to the Agreement State Status revocation and to the Rule 23 proceeding to revoke Nebraska's compact membership.

The Commission adopted, by a 4-1 vote, the resolution that notified the U.S. Nuclear Regulatory Commission and the State of Nebraska of the Central Interstate LLRW Commission's intent to seek by petition to have the portion of Nebraska's agreement state status with respect to licensing and regulation of low-level radioactive waste disposal facilities revoked upon NRC's initiative. The resolution also advised that no formal procedure to revoke be initiated until after the completion of the federal litigation. A provision was made for public comment on this issue at the annual meeting in June of 2003.

Outside Legal Counsel presented background information on the Commission's Rule 23 proceeding that began in 1999 after Nebraska passed legislation to withdraw from the Compact. Nebraska and the Commission had agreed to

postpone the proceeding until after the completion of the litigation. The Commission adopted a resolution by a 4-1 vote to notify the State of Nebraska that the Commission expected to receive for consideration as evidence of 'good faith' testimony of various witnesses, depositions, trial exhibits and particularly exhibits referenced in the two memoranda and orders of The Court dated September 30, 2002, and the two Court decisional memoranda themselves. Nebraska was given 60 days to offer written evidence to the Commission.

The second resolution pertaining to the withdrawal and possible revocation of compact membership proceeding was also approved by the Commission by a 4-1 vote. This resolution contained procedures for the hearing, again allowing 60 days for Nebraska to submit evidence of "good faith" to the Commission for deliberation in open session, and for the rendering of a decision by the Commission as to Nebraska's compliance with the Compact terms and its obligations and, if applicable, any sanctions to be imposed. The Commission set the hearing date for April 10, 2003.

The Commission approved a motion by a 4-1 vote to

discontinue the maintenance of the funds securing the guaranty that satisfied the Settlement Agreement resulting from the Rebate Case litigation between the State of Nebraska and the Commission. It was determined that the purpose for which the Guaranty Fund was established may no longer exist and that the discontinuation of the Fund would allow the return of the major generator contribution to the Fund. The rebate funds that were used to secure the guaranty remain restricted.

- Special Telephone Meeting March 14, 2003

A special meeting was called to take action on a complaint brought by Nebraska's Department of Environmental Quality relating to the decision made by the Commission at its January 22, 2003 meeting to discontinue the maintenance of a segregated and restricted Rebate Case Guaranty Fund. To avoid any additional litigation expense during the appeals process of the federal lawsuit, the state agency asked for a tolling agreement that would waive the 60 day limitation period in which a grievance of the Commission's final decision may obtain a judicial review. The Commission voted to sign-off on the Tolling Agreement by a vote of 5-0.

- Special Meeting
April 10, 2003

The Commission came together for a special meeting to receive evidentiary submissions by the State of Nebraska in the continuation of the Commission's Rule 23 Proceeding.

The Commissioners heard an outline of the history and the procedure for the Rule 23 Proceeding presented by Outside Legal Counsel. Counsel suggested that the record be closed at a future date specific and to limit consideration to the body of evidence presented in written documentation and oral presentations.

The Assistant Attorney General representing Nebraska gave a brief description of the evidence submitted by the state. He indicated to the Commission that the Rule 23 Proceeding was not timely due to the ongoing federal litigation and the still pending contested case hearing. He stated that the State of Nebraska felt it had met its obligations in the license review process and the Compact and that sanctions with the possible revocation of Compact membership would be an inappropriate action to take at this time. He suggested that the

Commission use a special master to assist with the review of evidence and its decision making process.

Motions were passed detailing the items to be considered as the record and that the record be closed on or before April 18, 2003, and that because the record closed on the 18th of April public comment would be excluded with respect to Rule 23 and statutory action that the Commission would consider at their June meeting.

- Annual Meeting
June 25, 2003

The Annual Meeting of the Commission was held in Lincoln, Nebraska. The Commissioners came together to take action on normal administrative business and elected the Oklahoma Commissioner as Chairperson for a second term.

The Commission heard comments from the major generator representative on the proposed petition to the U.S. Nuclear Regulatory Commission to revoke a portion of Nebraska's Agreement State Status. The representative indicated support for the Commission's action provided that the petition not be filed before the litigation is complete and that it would not imply any commitment of

funds received resulting from the litigation.

The Rule 23 Proceeding that began in 1999 was reconvened at this meeting. The Commissioners discussed in open session their findings on the 'good faith' evidence submitted by Nebraska. Commissioners from Arkansas, Kansas, Louisiana and Oklahoma voted to remove Nebraska from the Compact and to impose certain sanctions upon the state. The sanctions include revocation of Nebraska's membership in the Central Interstate Low-Level Radioactive Compact; Nebraska shall pay the balance of the total \$125,000 of dues not yet paid; all Nebraska's legal rights established under the Compact shall cease upon the effective date of revocation, that being one year from the date Nebraska receives its written notice from the Chair; all legal obligations which have arisen or which arise prior to the effective date of revocation shall not cease and shall be deemed binding until said obligations have been fulfilled and that would include the obligation as Host State; and, Nebraska shall take no action to interfere with or otherwise deny continued availability of the proposed site for possible licensing and disposal of low-level radioactive waste until such time that a new

alternative regional facility is developed and operational within the Central region and shall in no way interfere with the Commission's efforts in those matters.

- Emergency Meeting
July 2, 2003

An emergency meeting was held via teleconference for the purpose of reviewing one export application submitted for fiscal year 2001-2002. The emergency declaration indicated that the non federal generator had shipped low-level radioactive waste from the Central States Region without prior authorization and the waste had subsequently become part of a shipment for permanent disposal at Envirocare of Utah. The Commission approved the export application.

- Special Telephone Meeting
July 26, 2003

A special teleconference was held by the Commission to review and take action on 18 export applications for fiscal year 2003-2004. The Commission approved 2 federal applicants, 9 non-federal applicants and 7 major generator applicants.

Host State- Nebraska

Trial of the federal lawsuit began June 3, 2002 and lasted approximately 40 days. On September 30, 2002, U. S. District Court Judge Kopf handed down his decision in the lawsuit between the Central Interstate LLRW Commission and the State of Nebraska. Judge Kopf ruled in favor of the Commission. The State of Nebraska filed a request for a stay of the ruling on October 1, 2002 that signaled Nebraska's intent to appeal to the Eighth Circuit Court of Appeals.

In October 2002 the state initiated the appeals process by filing a Notice of Appeal in the U.S. District Court for the District of Nebraska. The appeal will challenge the Courts findings that Nebraska acted in 'bad faith' in reviewing the license application for the purposed llrw disposal facility. Also to be challenged is the Court's damage award of \$151 million to the Central Interstate LLRW Commission and the Court's denial of the state's request for a jury trial among other issues.

Oral arguments took place on June 12, 2003.

In April 2003, the state presented evidence at the Commission's Rule 23

Proceeding that began in 1999 following the receipt of notification of Nebraska's decision to withdraw from the Compact. The arguments presented were that the state acted in 'good faith,' in a timely manner and without political interference; that the state's administrative process is not yet complete therefore the Commission's determination on Nebraska's fulfillment of its obligations is premature; that the Commission may not sanction the state for exercising its right to withdraw from the Compact; that the state is entitled to an unbiased neutral decisionmaker; that the Commission's authority to revoke a state's membership is limited by the terms of the Compact; and that Nebraska has no continuing host state obligations under the Compact.

On June 25, 2003, the Commission voted to revoke Nebraska's membership to the Central Interstate LLRW Compact. The state filed a complaint in U.S. District Court contesting the revocation of membership on August 22, 2003.

Legislature

During the State of Nebraska's 98th legislative session, no new Bills were introduced that would affect the Commission.

NDEQ 2002 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 Regulation & Licensure (NDHHS). Their regulatory responsibility is to conduct a technical review of any proposal to build and operate a LLRW disposal facility in the state.

The State disagrees with the federal judge's decision in favor of the Commission and has appealed that decision to the Eighth Circuit Court of Appeals.

In August of 1999, the State notified the Commission of the legislative decision to withdraw from the Compact. Compact rules outline a five year effective date from notification to the member states.

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, 2002 reported that no funds have been collected from US Ecology for this purpose since the March 1999 restraining Court order. The Department has paid LLRW Program expenses from the State's general fund budget and from Cash Fund transfers.

Actual funds expended in fiscal year 2001 totaled \$2,428,277 for the Low-Level Radioactive Waste Program. The report indicates that the actual Program expenditure of State funds in fiscal year 2002 totaled \$8,323,584 with a proposed budget for fiscal year 2003 of \$7,572,865.

Developer-US Ecology

The Commission approved FY 2004 funding for US Ecology to continue site maintenance, to provide information and support on legal issues, to maintain project documents and materials, and remain available for any new issues that may arise during the year. Funding was also approved for US Ecology's attorney to address the pending issue of Boyd County adopting zoning regulations.

US Ecology's reports to the

Commission at the January and June 2003 meetings covered the following activities performed by the company, its attorney, or its consultant during FY 2003:

- USE's Consultant provided litigation support and testimony during the "bad faith" trial in June and July 2002.
- USE's attorney provided full legal services during the entire trial at no cost to the Commission.
- The two wells remaining on the Butte Site were decommissioned in November 2002.
- USE's Consultant reported to the Commission on the facility design after a seismic event 10 miles from the site in November, 2002. The report demonstrated that the event would have no effect on the structural integrity of the facility.
- USE's Consultant re-searched earlier decisions regarding wetland jurisdiction and confirmed the Corps of Engineers not having jurisdiction over the site D-3 area. The Mitigation Plan previously developed would satisfy State requirements for construction.

- USE's Consultant provided information on Boyd County's work on developing zoning regulations.
- USE also provided inspections and oversight of the site for maintenance and weed control. An agreement was made to provide site mowing and spraying for weed control at no cost. The agreement requires the removal of grasses after mowing.
- Other activities included responding to miscellaneous queries from the Commission staff and attorneys.

US Ecology's parent corporation, American Ecology, continued its economic growth by concentrating on its core business, radioactive and hazardous waste disposal. Unprofitable operations have been discontinued or divested to allow management to focus on continuing growth and profitability.

Waste Report

This year's Waste Survey was included in the Commission's mailing of the 2003-2004 export applications. The survey was also made available to those generators using the Commission's web site.

Fourteen shippers responded to the survey. Respondents included 4 medical facilities, 6 higher education facilities, 3 utilities and 1 industrial facility.

Of the two commercial disposal facilities available, the Barnwell, South Carolina, disposal facility was reported as being the most frequently used.

When asked how long they could store waste if they were unable to ship for disposal the respondents' replies ranged from 90 days to 10 years, however, they hoped that this would not be required.

The approximate costs associated with storing their waste has increased from last year with the highest cost being estimated at \$300,000 annually.

Annual costs for low-level radioactive waste management that includes minimization technology and on-site storage were reported as low as \$500 per year to as high as \$2,500,000 per year.

Four respondents indicated recent capital costs incurred or planned for the management of LLRW. Additional storage space is planned for one utility and a second utility indicated a cost of \$1,000,000.

Two higher education facilities,

one industrial and one utility indicated that modifications to operations have been made because of LLRW disposal / management problems.

A sample of concerns expressed by the Region's generators are as follows:

- Costs – fees and licenses
- Availability – Class B & C Waste disposal options
- We would hope that ground burial would continue to be available thus helping us to achieve the philosophy that dilution is not a good means of disposal.
- We continue to have concerns with disposal costs and facilities. We have audited Envirocare, but our corporate office feels they are too much of a liability.
- Increased cost and significant personnel exposure due to extra handling and monitoring while stored on site.
- Access to disposal sites at a reasonable cost.

Disposal Information

In previous issues of the Commission's Annual Report disposal information was retrieved from the Manifest

LLRW ACCEPTED FOR DISPOSAL AT BARNWELL	
States	Volume (ft³)
Arkansas	47,600
Kansas	552
Louisiana	426
Nebraska	621
Oklahoma	1
Total Received in Year 2002	49,198

Information Management System (MIMS) for the reported on year. In August 2001 preparations for the transition of MIMS data from Idaho National Engineering and Environmental Laboratory (INEEL) to the office of DOE's new contractor MACTEC, Inc. began. In July 2002 information was received from the LLW Forum that DOE's EM Management had decided "to divest themselves of those activities not directly related to EM's current mission" and that they "will not provide funds to support MIMS in FY2003." In April and again in July of 2003 information was received that the MIMS site was again on the

move. MACTEC closed its office on June 30, 2003 and has transferred its operations to Project Enhancement Corporation (PEC). DOE's Environmental Management Office has been temporarily assigned as the main point of contact for MIMS. The information on the site includes disposal information through September 2002 for Barnwell and January 2003 for Envirocare.

The MIMS web site may be accessed at: <http://mims.apps.em.doe.gov>

The information for calendar year 2002, in the chart above ,

was taken from the Radioactive Exchange, Vol 22 No. 1, January 17, 2003, page 5. The chart shows the total volume by cubic feet received at the Barnwell facility during 2002 from the Central States Region.

As of July , 2003, the generators of the Region have shipped a total of 3,532 cubic feet of waste to the Barnwell facility.

Information for calendar year 2002, in the chart below, was obtained from the MIMS site. The chart shows the total volume by cubic feet and activity in curies received by Envirocare of Utah during 2002 from the Central States Region.

The Commission approved 32 export applications for this reporting period; 6 from Arkansas, 9 from Kansas, 7 from Louisiana, 6 from Nebraska and 4 from Oklahoma.

LLRW ACCEPTED FOR DISPOSAL AT ENVIROCARE		
States	Volume (ft³)	Activity (curies)
Arkansas	1,699	1.36
Kansas	185	1.37
Louisiana	17,712	6.12
Nebraska	1,461	1.60
Oklahoma	671,826	.71
Total Received in Year 2002	692,883	11.16

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.cillrwc.org) for details of past litigation.

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 opposed the certiorari request. The Supreme Court refused to hear Nebraska's 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.

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 objected to a small portion of the report and recommendation; Judge Kopf overruled the objection and adopted the Master's report.

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.

The parties conducted extensive discovery throughout 2001 and early 2002.

Following a pretrial conference and the preparation of a detailed pretrial order, trial of the case commenced on June 3, 2002, and concluded on July 30, 2002. Approximately 30 witnesses testified and about 2000 exhibits (totally, somewhere around 100,000 pages in length) were received in evidence. After briefing and oral argument, Judge Kopf on September 30, 2002, announced his decision in favor of the Commission. The memorandum opinion and judgment granted damages to the Commission only in the total amount of \$151,408,240.37, plus postjudgment interest at 1.68% until paid. The major generators' claim against the Commission, to the effect that if the Commission received money, the generators wanted it turned over to them as the original source, was rejected by the Court, finding that the Commission itself was entitled to receive the money and to decide whether to

reimburse the generators or make other use of it. The generators could later try to reverse any such decision by a new appeal if they felt aggrieved by it.

The State appealed to the Eighth Circuit Court of Appeals, arguing it should have been granted a jury trial, that the approximately \$53,000,000 of prejudgment interest included in the verdict should not have been allowed, and several other arguments. Oral argument was held before Judges Diana Murphy, Kermit Bye, and Pasco Bowman on June 12, 2003, in St. Paul, Minnesota. A decision is expected possibly by the end of this year, although the timing is wholly up to the Court.

State of Nebraska v. Central Interstate Low-Level Radioactive Waste Commission

(United States District Court for the District of Nebraska, Case No.: 4:03CV-3308)

This lawsuit, filed August 22, 2003, contends that the Commission's decision to revoke Nebraska's membership in the compact is invalid for various reasons. The Commission intends to defend its decision.

Export Applications for FY03-04 can now be accessed through the Commission's Web Page @ www.cillrwcc.org

The next meeting of the Commission is tentatively scheduled for January 21, 2004 and is to be in New Orleans, Louisiana

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.

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>.

STATUS OF COMMISSION FUNDS
as of June 30, 2003

Rebate Funds

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 "Guaranty Fund" rebate case settlement funds obligated (CIC Acct)	\$829,461 ^{Principal}
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. Commission voted to discontinue maintenance of this fund at its January 2003 meeting.	\$ 70,539 ^{Interest}
	<u>\$900,000</u> ^{Total}

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 voted to discontinue maintenance of this fund at its January 2003 meeting and to allow the return of the major generator's contribution with accrued interest.

Commission Cash Expenditures for Fiscal Year 2002-2003 and Budget for Fiscal Year 2003-2004

Expense	FY00-01	FY01-02	FY02-03 Budget (1)	FY02-03 Actual	FY03-04 Budget
Salaries & Benefits	70,649	90,364	81,972	75,987	89,169
Rent	27,652	27,722	29,000	27,627	29,000
Telephone	4,721	4,009	6,000	4,217	6,000
Postage	1,215	608	1,500	730	1,500
Copy & Printing	40	101	500	237	500
Machine Lease & Maintenance	2,515	2,863	4,000	2,745	4,000
Meeting Transcriptions	1,163	1,160	4,000	2,273	4,000
Dues & Subscriptions	5,958	8,491	9,000	8,631	9,000
Office Equipment & Supplies	4,626	4,666	5,000	4,544	5,000
Travel & Meeting Expense	4,596	4,166	9,000	4,630	9,000
Insurance	3,340	3,042	3,500	3,256	4,000
Accounting	20,925	19,100	22,000	20,700	22,000
Legal Fees	430,073	1,157,622	435,000	432,880	350,000
Miscellaneous	34	4	500	89	500
Project Manager	0	0	0	0	0
Cash Reserve / Recover Shortfall			149,500	149,500	40,000
Butte Site Maintenance / USE	25,599	262,296	58,930	58,298	52,591
Total	603,106	1,586,213	819,402	796,344	626,260
(1) Amended June 25, 2003					

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

Financial Statements

June 30, 2003 and 2002

(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, 2003 and 2002, and the related statements of revenues, expenses, and changes in 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, 2003 and 2002, 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 August 7, 2003, 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 audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audits.

/s/ KPMG LLP

August 7, 2003
Omaha, Nebraska

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

Balance Sheets
June 30, 2003 and 2002

Assets	2003	2002
Current assets:		
Cash and cash equivalents	\$ 221,984	457,757
Restricted assets:		
Rebate fund	626,089	138,420
Guarantee fund	400,000	1,000,000
Project fund	5,896	13,456
Total restricted assets	<u>1,031,985</u>	<u>1,151,876</u>
Property and equipment	82,743	81,264
Less accumulated depreciation	<u>78,487</u>	<u>76,095</u>
Property and equipment, net	<u>4,256</u>	<u>5,169</u>
Total assets	<u><u>\$ 1,258,225</u></u>	<u><u>1,614,802</u></u>
Liabilities and Retained Earnings		
Liabilities:		
Current liabilities:		
Accounts payable	\$ 178,357	369,294
Accrued expenses	10,072	9,478
Unearned export application fees	<u>—</u>	<u>331,775</u>
Total current liabilities	188,429	710,547
Retained earnings	<u>1,069,796</u>	<u>904,255</u>
Total liabilities and retained earnings	<u><u>\$ 1,258,225</u></u>	<u><u>1,614,802</u></u>

See accompanying notes to financial statements.

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

Statements of Revenues, Expenses, and Changes in Retained Earnings

Years ended June 30, 2003 and 2002

	2003	2002
Revenues:		
Commission member fees	\$ 125,000	125,000
Export application fees	656,900	1,053,500
Other	50	126
Total revenues	781,950	1,178,626
Operating expenses:		
Salaries and benefits	73,821	93,489
Professional services	452,958	1,113,001
Office and administrative	22,880	21,394
Rent	27,627	27,723
Travel	4,630	4,166
Depreciation	2,392	2,750
US Ecology site maintenance	21,158	15,265
US Ecology consulting	37,229	247,034
Total operating expenses	642,695	1,524,822
Income (loss) from operations	139,255	(346,196)
Interest income	26,286	55,346
Net income (loss)	165,541	(290,850)
Retained earnings, beginning of year	904,255	1,195,105
Retained earnings, end of year	\$ 1,069,796	904,255

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

Statements of Cash Flows

Years ended June 30, 2003 and 2002

	<u>2003</u>	<u>2002</u>
Cash flows from operating activities:		
Income (loss) from operations	\$ 139,255	(346,196)
Adjustments to reconcile income (loss) from operations to cash provided by (used in) operating activities:		
Depreciation	2,392	2,750
Changes in assets and liabilities:		
Accounts payable	(190,937)	185,248
Accrued expenses	594	2,050
Unearned export application fees	(331,775)	318,650
Total adjustments	(519,726)	508,698
Net cash provided by (used in) operating activities	(380,471)	162,502
Cash flows from investing activities:		
Interest received	26,286	55,346
Sales (purchases) of certificates of deposit	112,331	(36,503)
Purchases of property and equipment	(1,479)	(2,423)
Net cash provided by investing activities	137,138	16,420
Net increase (decrease) in cash and cash equivalents	(243,333)	178,922
Cash and cash equivalents at beginning of year	471,213	292,291
Cash and cash equivalents at end of year	\$ <u>227,880</u>	<u>471,213</u>
Reconciliation to balance sheets:		
Cash and cash equivalents	\$ 221,984	457,757

Notes to Financial Statements

June 30, 2003 and 2002

(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 (Compact) by providing for and encouraging the safe and economical management of low-level radioactive waste 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

(a) *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 pronouncements.

(b) *Revenue Recognition*

Funding from Major Generators

The major generators provide funding for the siting, licensing, development, and construction of the facility. Revenues are recognized as earned, and expenses are recognized as incurred. Construction and development of the project is currently on hold. The Commission did not receive funding from the major generators for the years ended June 30, 2003 and 2002.

Commission Member Fees

Commission members pay a \$25,000 annual membership fee.

Export Application Fees

Fees for approval to export waste are recorded as revenue when earned. This fee is used to cover the Commission's operating expenses. During 2002, several generators prepaid approximately \$332,000, which has been reflected as unearned export application fees in the accompanying balance sheet.

(c) *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.

(d) *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. 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 agreed to guarantee payment by US Ecology of certain licensing activity costs incurred by the State of Nebraska. Related to this guarantee, the Commission was 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 preclicensing payments to the State of Nebraska. Commission management believes that presently no circumstances exist to necessitate the use of monies in the guarantee fund for payment of licensing costs incurred by the State of Nebraska. At the end of the preclicensing period, when the license decision is final, the guaranty provisions expire. During the year ended June 30, 2003, the Commission determined the \$1,000,000 guarantee fund was no longer needed and approved release of those funds securing the guaranty. Subsequent to the fiscal year end, \$100,000 (plus accrued interest), furnished by the major generators, has been recorded as an accounts payable and will be returned to the major generators during fiscal year 2004 and \$600,000 has been invested in long-term certificates of deposit subsequent to the fiscal year end.

(e) *Use of Estimates*

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results may differ from the estimates and assumptions used in preparing the financial statements.

(f) *Reclassifications*

Certain balances from 2002 have been reclassified to conform to the current year presentation.

(3) Cash and Certificates of Deposit

At June 30, 2003 and 2002, the Commission had \$1,250,548 and \$1,609,633, respectively, invested in short-term federal investment trust accounts backed by the full faith of the federal government. In addition, at June 30, 2003, the Commission had \$3,421 of cash covered by FDIC deposit insurance.

(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.

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 that would withdraw Nebraska from the Commission effective in August 1999. Nebraska would remain a member for up to five years after its notice to withdraw was submitted to the Commission. The Commission 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 case was tried commencing June 30, 2002 and ended July 31, 2002. The court set a schedule for post trial briefs and oral argument and indicated its intent to render a decision by September 2002. The major generators and US Ecology filed cross claims against the Commission for equitable subrogation or reimbursement since the Commission received monetary judgment in September 2002. As of June 30, 2002, the Commission has no net claims for liability against it, except for the costs of prosecuting the case.

On September 30, 2002, the court entered judgment in favor of the Commission in the amount of \$151,408,240, plus postjudgment interest until paid. The State of Nebraska has appealed the decision. The parties have submitted briefs and, on June 12, 2003, the Eighth Circuit Court of Appeals heard oral argument. The appeal is submitted for the Court's decision, which has not been rendered as of this date. The accompanying financial statements do not reflect the effects of the above.

**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, 2003 and have issued our report thereon dated August 7, 2003. 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.

/s/ **KPMG LLP**

August 7, 2003
Omaha, Nebraska

