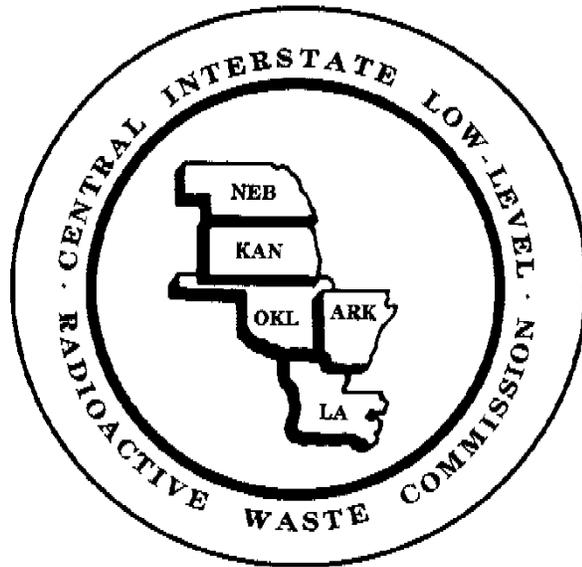


Central Interstate Low-Level Radioactive Waste Commission



**Annual Report
2004-2005**

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 meeting in September 1996 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 again held in Naper and Butte Nebraska in November 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. The Commission received a favorable decision in the 'bad faith' lawsuit on September 30, 2002 and was 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 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 reconvened 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' that 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. The State received official notification on July 17, 2003 and on August 22, 2003, Nebraska filed a complaint in U.S. District Court contesting the Commission's actions.

In October 2002, the State of Nebraska appealed the Court's decision on the 'bad-faith' litigation. The Eighth Circuit Court of Appeals heard oral arguments in June 2003 and affirmed the lower court decision

in February 2004. Nebraska filed a petition for rehearing en banc in March and on April 22, 2004 the Eighth Circuit Court of Appeals denied the state's petition. On July 16, 2004, Nebraska filed a Petition for Writ of Certiorari with the U. S. Supreme Court.

Boyd County Board members amended local zoning regulations to require the issuance of a conditional-use permit before construction of a llrw disposal facility could begin. The Boards original propose was to amend the zoning regulations is such a way that would have prohibited the disposal of radioactive materials and hazardous waste within the county.

Nebraska's Governor signed into law a Bill that reduced the interest rate that the state pays on judgments from 10 percent to a flexible rate that changes with the U.S. Treasury note yield. The Commission had asked the Court to lift the stay of the \$151 million judgment, claiming that Nebraska had passed the law in response to the judgment "to weaken the statutory means of promptly enforcing judgments against the state." Judge Kopf denied the Commission's request.

The Commissioners declined the proposed settlement offer made by the state at its June 8, 2004 meeting and indicated a counter-proposal would be forth coming.

The Commission held two additional meetings to consider the terms of agreement and accepted (3-1 vote with Kansas voting no) the revised offer at the August 9, 2004 meeting with Nebraska agreeing to pay the Commission \$140.5 million in principal over a 4 year period. The agreement also stipulates that all pending litigation and claims will be ended amicably, and for a period of nine months a cooperative effort will be made to access disposal outside the region for waste generated within the compact boundaries.

Project Status Update

At the Commission's January 12, 2005 meeting, the Commissioners formed three committees. The Financial Services Search Committee, for the purpose of looking at options for the holding and/or investing of some or all of the funds. A second committee named Claims Review Committee, for the purpose of soliciting and reviewing claims against the settlement funds. A third committee was formalized, named Disposal Negotiations Committee, for the purpose of continuing negotiations for disposal access.

Significant Events Recap

Commission Meetings

Meetings held in July and August 2004 were reported in the Annual Report 2003-2004

- Mid-Year Meeting
January 12, 2005

On January 12, 2005, the Commission held their Mid-Year Meeting in Oklahoma City, Oklahoma. The meeting was called to take action on administrative business and to hear the status report on negotiations for disposal access.

Mr. Joseph Harkins joined the Commission as the new Kansas representative.

The Commission received oral reports from the Administrator, US Ecology and Legal Counsel. Legal Counsel reported on the status of the settlement with the State of Nebraska and possible payment schedules the state might use. The Commission and the State of Nebraska agreed to work together for a period of nine months to see if a deal could be reached, with an eye toward both Utah and Texas, for access to disposal of low-level radioactive waste for the generators of the four compact states and Nebraska. Should an arrangement be made for

disposal, Nebraska would be entitled to a \$10 million discount off the total judgment amount.

Legal Counsel had been previously asked by the Chairman to conduct a review on the legal obligations and role of the Commission going forward. Counsel indicated that he had reviewed the Compact Law and informed the Commission that his opinion was that if the Commission continued to seek a solution to the management or disposal of the low-level radioactive waste generated within its borders either by contracting with another state or compact or developing a new disposal site within the region would satisfy the law. Counsel also spoke to Nebraska's continued 'host state' obligations until full payment of the settlement agreement had been met, the meetings requirements, formation of committees and majority vote.

Anticipating the arrival of the settlement funds from the State of Nebraska to be approximately August 1, 2005, the Commission voted to form a committee, named Financial Services Search Committee, for the purpose of looking at options for the holding and/or investing of some or all of the funds. A second committee was formed, named Claims Review Committee, for the purpose of soliciting and reviewing claims against the settlement funds. A third committee was formalized,

named Disposal Negotiations Committee, for the purpose of continuing negotiations for disposal access.

In an attempt to reduce lengthy delays in the authorization of export applications, the Commission adopted a Resolution that provided for distressed generators a letter of extension for their previously approved authorization to export. This would allow the generator to meet shipping schedules until the Commission met to review and take action on export applications submitted.

The Commission also took action on meeting minutes, two export applications, fiscal year 2003-2004 audit, membership in the LLW Forum, and the financial consultant's contract.

- Special Telephone Meeting March 22, 2005

Commissioners from Arkansas, Kansas and Oklahoma held a very short teleconference to take action on one non-federal export application. The application was approved by a unanimous vote.

- Annual Meeting June 29, 2005

The Annual Meeting of the Central Interstate LLRW Commission was held in

Omaha, Nebraska. The Commissioners came together to take action on normal administrative business that included the approval of US Ecology's Work Plan A funding request for fiscal year 2005-2006, the Commission's administrative budget and the setting of export fees for the coming fiscal year. The Commissioners also elected the Arkansas Commissioner to serve as Chair for fiscal year 2005-2006.

A large part of the meeting was devoted to fact gathering, to learn what the Commission needed to do to stay in compliance with the federal mandates and with the wishes of the four member states. The Chair stated that the Commission had reached a settlement with the State of Nebraska and since that time, the Compact had a new vantage point from which to look at its duties and responsibilities.

Contact had been made with two different Compacts regarding their generators' waste and what they felt their mission was. The Executive Director of the Midwest Compact briefed the Commission on their history and indicated that they had chosen to shut down their project because it would not be economically viable to continue. The Midwest Compact's approach to the federal mandates is to be alert to possibilities, to ensure disposal availability and to be active in

their supporting role of the compact system.

Two members of the public addressed the Commission. Mr. Kenneth Reiser asked the Commission to share the Settlement funds with the Village of Butte and their educational fund and other causes. The Mayor of Butte formally requested compensation for the Village with funds to help with the water system that was overbuilt in anticipation of the disposal facility completion.

The Commission heard presentations from two financial advisory agencies recommended by the Financial Services Search Committee, for the purpose of holding or possibility investing the Settlement funds until such time as a decision could be made as to their use or distribution.

Legal Counsel gave advice to the Commission regarding the disposal negotiations and claims against the settlement funds during a closed session. The Chair shared with the public that negotiations with Envirocare were ongoing and that Texas was still a possibility.

Discussion continued on the topic of the Commission's future role. The Chair stated that the role of the Commission could go from one extreme to the other and that a consultant would be of aid in the research necessary to make informed decisions. The

former Kansas Commissioner, Commission Chair and attorney was suggested as a potential candidate. A motion was passed to make contact with Mr. Jim O'Connell and discuss a short-term contract as Consultant to the Commission on this issue.

A two-day meeting was scheduled for July 14-15, 2005 to continue the discussions on the future role, claims, disposal negotiations and budgetary changes that might be necessary.

Host State- Nebraska

On August 17, 2004, the U.S. District Court approved an agreement that was reached between the State of Nebraska and the Commission following several years of litigation.

The settlement brings to an end the outstanding litigation between the State of Nebraska and the Central Interstate LLRW Commission. Nebraska agrees to pay the Commission \$140.5 million over a four year period at 3.75 percent and agrees to continue talks with the State of Texas regarding the acceptance of llrw generated in the Central States region. If the talks are successful, Nebraska's payment obligation would be reduced to \$130 million.

On July 16, 2004, the State released a proposal to the State of Texas that was being made jointly by the State and the Commission. The proposal was to allow waste generated in the Compact region and Nebraska to be disposed at the planned Texas Compact site. The offer was for a one-time \$25 million access fee and a \$5 million contribution to the Texas Perpetual Care Fund.

Legislature

Nebraska's 99th legislative session approved their biennial budget for fiscal years 2005-06 and 2006-07 that included a payment from their Cash Reserve Fund to the LLRW Settlement Fund.

NDEQ 2004 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 (NDHHSR&L). Their regulatory responsibility is to

conduct a technical review of any proposal to build and operate a LLRW disposal facility in the state. After a comprehensive review, US Ecology's license application was denied on December 18, 1998.

On August 17, 2004, an agreement was reached between the Commission and the State of Nebraska and was approved by the Court.

This settlement agreement brought to an end two lawsuits with the Commission. The first suit was filed in December 1998. The Commission challenged the State, alleging it acted in bad faith in making its decision to deny US Ecology's license application. On September 30, 2002, the U. S. District Court issued a decision against the State of Nebraska for \$151 million. The State appealed the decision to the United States Supreme Court. The State agreed to withdraw its Supreme Court appeal as part of the settlement. The Commission agreed to file a "Satisfaction of Judgment" with the District Court upon Nebraska's timely payment of a \$140.5 million settlement figure. The utility plaintiffs agreed to dismiss their related claims pending in State Court.

The second suit the settlement ended involved a challenge by Nebraska to a July 2003 action by the Commission to revoke Nebraska's membership in the compact. This action took place

after the State had formally notified the Commission of its intent to withdraw its membership. The State agreed to drop the suit as part of the settlement agreement.

The agency plans to close out its Low-Level Radioactive Waste Program as a result of the settlement agreement. No additional general funds have been requested to continue operations. One staff member will continue to monitor national low-level radioactive waste activities.

Developer-US Ecology

The Commissioners voted to approve funding for US Ecology for fiscal year 2005-2006 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.

US Ecology reported activities to the Commission at the January and June 2005 meetings that included the following:

Annual inspection of geologic core samples from the Butte site that are stored in Lincoln in a bonded warehouse and

continued maintenance of the chain of custody records.

Maintenance of the Butte site to stay in compliance with the State of Nebraska requirements.

Monitor the Butte newspapers, Board minutes and the Nebraska Legislature.

Waste Report

This year's Waste Survey was included in the Commission's mailing of the 2004-2005 export applications. The survey was also made available to those generators using the Commission's web site.

Seventeen generators responded to the survey. Respondents included 2 medical facilities, 4 higher education facilities, 4 utilities, 6 industrial facilities, and 1 research 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 6 months to 5 years.

The estimated costs that would be incurred if llrw would have to

be stored ranged from \$1,000 to \$50,000 annually.

Annual costs for low-level radioactive waste management that includes minimization technology and on-site storage were reported as \$5,000 per year to as high as \$1,000,000 per year.

Six respondents indicated recent capital costs incurred or planned for the management of LLRW. Additional storage space is planned for one utility, one industrial facility, and one university.

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

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

- Class B/C & large component issues.
- Lack of Class B/C disposal options.
- Concentrate and contain is a more suitable disposal method than dilute and dispose. The latter falls short of an ideal waste disposal option.
- When and where we will be able to dispose. We are concerned that the Barnwell site may no longer be available.

- The increased difficulty of disposal and the increased expense.

Disposal Information

The Manifest Information Management System (MIMS) is a database used to monitor the management of commercial low-level radioactive waste (LLW) in the U.S. MIMS was developed in 1986 by the U.S. Department of Energy (DOE) in response to provisions in 42 U.S.C. 2021g(a).

In previous issues of the Commission's Annual Report disposal information was retrieved from the Manifest Information Management System (MIMS) for the reported on year. The MIMS database was found to contain some inaccuracies that were identified during a review by the General Accounting Office (GAO). The GAO completed their study on future disposal availability and reported to the Chairman, Committee on Energy and Natural Resources, U.S. Senate, in June 2004. The report indicated that the

LLRW database (MIMS), maintained by DOE, was an unreliable source for obtaining disposal volumes. The report also indicated that LLRW disposal volumes had increased by 200 percent between 1999 and 2003 primarily due to DOE shipments to commercial disposal facilities. To read the full report go to www.gao.gov/new.items/d04604.

On September 30, 2004, the Senate Energy Committee held a hearing on the GAO report regarding future disposal availability for low-level radioactive waste. Issues discussed included the current status of waste management and disposal in the U.S.; if there is adequate disposal available; the status of the MIMS data and efforts to improve the reliability; DOE's efforts to recover and safely dispose of sealed sources and the proposed legislation regarding the same; and recommendations made by CalRad Forum to deal with what the organization believes to be a pending crisis for future disposal access.

LLRW ACCEPTED FOR DISPOSAL AT BARNWELL	
States	Volume (ft³)
Arkansas	4,342.47
Kansas	1,864.03
Louisiana	5,675.31
Oklahoma	140.63
Total Received in FY 2004-05	12,022.44

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) for details of past litigation.

ENTERGY ARKANSAS, INC., ET AL. V. NEBRASKA **United States District Court for the District of Nebraska** **(Case No. 4:98-cv-3411)**

In December, 1998, several of the region's major generators filed a lawsuit in federal court which alleged that the State of Nebraska had processed and ultimately denied US Ecology's license application in bad faith, and that such actions violated the Compact. The Commission was originally named a defendant in the suit. At its January, 1999, meeting, the Commission authorized its outside counsel to ask the court to realign it as a plaintiff in the lawsuit and to join in the claims originally made by the major generators as well as elaborate on claims of the CIC based squarely on specific Compact obligations. The court granted that motion.

Over the next several years, the parties engaged in a lengthy and complicated discovery process. Nebraska also took two appeals to the Eighth Circuit of Appeals. The first such appeal challenged the district court's entry of a preliminary injunction which stayed state administrative proceedings relating to the license application denial, and prohibited Nebraska from charging the Commission any additional money for licensing work or litigation. The second appeal challenged the district court's decision to deny the State's motion to dismiss the Commission's claims. Both appeals were rejected by the Eighth Circuit.

The case was tried to the court without a jury, over Nebraska's protest. Commencing on June 3, 2002, and concluding on July 30, 2002, the parties presented extensive evidence to Judge Kopf. Approximately 30 witnesses testified and about 2,000 exhibits (totaling nearly 100,000 pages in length) were received in evidence. On September 30, 2002, following briefing and oral argument, Judge Kopf entered judgment in favor of the Commission. The court's decision awarded total damages to the Commission in the amount of \$151,408,240.37, plus post-judgment interest at 1.68% until paid. The major generators' claims against the Commission, which sought to impose some form of trust on the Commission's receipt of the judgment funds, were rejected by the court.

Nebraska appealed the monetary judgment to the Eighth Circuit Court of Appeals. Oral argument was held before a panel of the Eighth Circuit on June 12, 2003. On February 18, 2004, the Eighth Circuit Court of Appeals affirmed the district court's decision. Thereafter, Nebraska sought rehearing by the entire Eighth Circuit, which request was denied on a vote of 6-3. Nebraska then filed a petition for certiorari requesting the United States Supreme Court to review the Eighth Circuit's decision.

While the State's certiorari petition was pending, Nebraska and the CIC entered settlement negotiations. Following those lengthy negotiations, the State of Nebraska and the Commission entered into a settlement which resolved all of the various disputes remaining between them. The terms of the settlement are discussed in more detail later.

NEBRASKA V. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION
United States District Court for the District of Nebraska
(Case No. 4:03-cv-3308)

On August 30, 1999, the State of Nebraska, through its Governor, notified the Commission that it was formally withdrawing from the Compact. Under the terms of Compact Article VII(d), that withdrawal was to take effect five years thereafter, or on August 30, 2004. Shortly after receiving Nebraska's withdrawal notice, the Commission instituted proceedings pursuant to its Rule 23 which provides an administrative process to determine remaining obligations of party states which seek to withdraw from the Compact. The Commission's Rule 23 proceedings were effectively put on hold pending the outcome of the federal lawsuit alleging that Nebraska had processed and denied the license application in bad faith. Following the court's decision in that litigation, the Commission revived its Rule 23 administrative proceeding. On June 25, 2003, following a hearing before the Commission, the Commission adopted two resolutions revoking the State of Nebraska's membership in the Compact and imposing sanctions. On August 22, 2003, Nebraska filed a lawsuit in the United States District Court alleging that the Commission's actions in revoking Nebraska's membership in the Compact were invalid for several reasons.

Over the next nine months, the parties conducted discovery relating to the legal issues raised by litigation. This lawsuit was ultimately resolved by the global settlement entered into by the Commission and the State of Nebraska, which is discussed in more detail below.

CIC AND NEBRASKA SETTLE THEIR REMAINING DISPUTES

In the spring of 2004, Nebraska's Attorney General approached the Commission's legal counsel with a request that the parties attempt to settle the various legal disputes still remaining. The parties negotiated over the next several months. Effective August 1, 2004, Nebraska and the CIC entered into a comprehensive settlement agreement which is intended to resolve all disputes remaining between them.

The settlement agreement provides that Nebraska will pay to the Commission \$140,541,076.79 in four equal annual installments commencing on August 1, 2005. The unpaid balance bears interest at the rate of 3.75% starting August 1, 2004. There is no prepayment penalty, so Nebraska may pay the principal amount early and save some interest expense. Nebraska and CIC have made a joint offer to Texas for access to the disposal facility proposed for the Texas Compact; if Nebraska and CIC strike a deal with Texas within certain agreed parameters, the principal amount of the settlement is reduced to \$130 million.

The settlement agreement further provides that Nebraska and CIC agree to cooperate for a period of at least nine months in an effort to find a disposal capacity for waste generated within the CIC region and Nebraska. Nebraska has agreed to dismiss all remaining litigation, including withdrawing its cert petition in the "bad faith" litigation. Upon Nebraska making all payments required by the agreement, CIC agrees to release Nebraska from all obligations under the Compact, including the obligation to be the region's first host state. If Nebraska's Legislature fails to appropriate the money for the agreed payments or if for any other reason Nebraska does not make the payments on time, then the Commission would have various available collection remedies as stated in the agreement, and Nebraska would again be subject to its host state obligation.

STATUS OF COMMISSION FUNDS
as of June 30, 2005

Rebate Funds

\$829,461^{Principal}

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.

Subsequent Event

Effective August 1, 2004, Nebraska and the CIC entered into a comprehensive settlement agreement. Nebraska will pay the Commission \$140,541,079 in four equal annual installments starting on August 1, 2005. The unpaid balance bears interest at the rate of 3.75% starting August 1, 2004. For additional information on the settlement please refer to the Litigation Summary on page 17 of this report.

Commission Cash Expenitures for Fiscal Year 2004-2005 and Budget for Fiscal Year 2005-2006

Expense	FY02-03	FY03-04	FY04-05 Budget	FY04-05 Actual	FY05-06 Budget
Salaries & Benefits	75,987	63,429	88,104	73,405	93,125
Rent	27,627	28,092	30,000	28,464	30,000
Telephone	4,217	4,887	6,000	4,707	6,000
Postage	730	743	1,500	701	1,500
Copy & Printing	237	287	500	374	500
Machine Lease & Maintenance	2,745	2060	4,000	1,583	4,000
Meeting Transcriptions	2,273	1,816	4,000	2,716	4,000
Dues & Subscriptions	8,631	8,842	9,000	8,787	9,000
Office Equipment & Supplies	4,544	4,486	5,000	2,164	5,000
Travel & Meeting Expense	4,630	4,436	12,800	14,060	15,000
Insurance	3,256	3,660	4,000	3,833	4,000
Accounting	20,700	20,200	26,400	24,400	25,000
Legal Fees	432,880	147,759	241,800	197,906	100,000
Miscellaneous	89	60	500	137	500
Cash Reserve / Recover Shortfall	149,500	0	0	0	0
Butte Site Maintenance / USE	58,298	33,706	53,109	57,404	74,174
Total	796,344	324,463	486,713	420,441	278,674

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>.

Export Applications for FY05-06 can now be accessed through the Commission's Web Page @ www.cillrwcc.org

The next meeting of the Commission is tentatively scheduled for February 24, 2005 and is to be held in Little Rock, Arkansas



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

Financial Statements

June 30, 2005 and 2004

(With Independent Auditors' Reports Thereon)

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

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Independent Auditors' Report

The Commissioners
Central Interstate Low-Level
Radioactive Waste Commission:

We have audited the accompanying statements of net assets of the Central Interstate Low-Level Radioactive Waste Commission (the Commission) as of June 30, 2005 and 2004, and the related statements of revenues, expenses, and changes in net assets 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 consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control over financial reporting. Accordingly, we express no such opinion. 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 respective financial position of the Central Interstate Low-Level Radioactive Waste Commission as of June 30, 2005 and 2004, and the respective changes in its net assets 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 5, 2005 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, grants, agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

The Commission has not presented Management's Discussion and Analysis that accounting principles generally accepted in the United States of America has determined is necessary to supplement, although not required to be part of, the basic financial statements.

KPMG LLP

Omaha, Nebraska
August 5, 2005

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

Statements of Net Assets

June 30, 2005 and 2004

Assets	<u>2005</u>	<u>2004</u>
Current assets:		
Cash and cash equivalents	\$ 715,725	513,150
Receivable from the State of Nebraska	37,853	—
Restricted assets:		
Rebate fund	964,265	943,403
Receivable from the State of Nebraska	145,334,323	130,000,000
Total restricted assets	<u>146,298,588</u>	<u>130,943,403</u>
Capital assets	78,763	85,608
Less accumulated depreciation	76,970	81,345
Total capital assets, net	<u>1,793</u>	<u>4,263</u>
Total assets	<u>\$ 147,053,959</u>	<u>131,460,816</u>
Liabilities and Net Assets		
Current liabilities:		
Accounts payable	\$ 39,823	32,093
Accrued expenses	14,770	107,029
Litigation settlement payable	130,773,514	—
Total liabilities	<u>130,828,107</u>	<u>139,122</u>
Net assets:		
Invested in capital assets	1,793	4,263
Restricted	15,525,074	130,943,403
Unrestricted	698,985	374,028
Total net assets	<u>16,225,852</u>	<u>131,321,694</u>
Total liabilities and net assets	<u>\$ 147,053,959</u>	<u>131,460,816</u>

See accompanying notes to financial statements.

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

Statements of Revenues, Expenses, and Changes in Net Assets

Years ended June 30, 2005 and 2004

	2005	2004
Operating revenues:		
Commission member fees	\$ 100,000	125,000
Export application fees	498,375	585,875
Other	—	325
Total operating revenues	598,375	711,200
Operating expenses:		
Salaries and benefits	73,405	66,948
Professional services	130,263	210,384
Office and administrative	22,149	21,729
Rent	28,464	28,092
Travel	14,059	3,823
Depreciation	2,470	2,858
Refund to major generators	—	105,896
U.S. Ecology site maintenance	18,532	17,853
U.S. Ecology consulting	39,009	26,883
Total operating expenses	328,351	484,466
Total operating income	270,024	226,734
Nonoperating revenues (expenses):		
Interest income	35,472	25,164
Proceeds from litigation settlement	15,372,176	130,000,000
Distribution of litigation settlement	(130,773,514)	—
Total nonoperating revenues (expenses)	(115,365,866)	130,025,164
Change in net assets	(115,095,842)	130,251,898
Net assets:		
Beginning of the year	131,321,694	1,069,796
End of the year	\$ 16,225,852	131,321,694

See accompanying notes to financial statements.

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

Statements of Cash Flows

Years ended June 30, 2005 and 2004

	<u>2005</u>	<u>2004</u>
Cash flows from operating activities:		
Receipts from customers	\$ 598,375	711,200
Payments to employees	(73,405)	(66,948)
Refund to major generators	—	(105,896)
Other payments	(337,005)	(358,071)
Net cash provided by operating activities	<u>187,965</u>	<u>180,285</u>
Cash flows from capital and related financing activities:		
Purchases of capital assets	—	(2,865)
Net cash used in capital and related financing activities	<u>—</u>	<u>(2,865)</u>
Cash flows from investing activities:		
Interest received	35,472	25,164
Net sales (purchases) of certificates of deposit	(20,862)	88,582
Net cash provided by investing activities	<u>14,610</u>	<u>113,746</u>
Net increase in cash and cash equivalents	202,575	291,166
Cash and cash equivalents at beginning of year	<u>513,150</u>	<u>221,984</u>
Cash and cash equivalents at end of year	<u>\$ 715,725</u>	<u>513,150</u>
Reconciliation of operating income to net cash provided by operating activities:		
Total operating income	\$ 270,024	226,734
Adjustments to reconcile operating income to net cash provided by operating activities:		
Depreciation expense	2,470	2,858
Changes in assets and liabilities:		
Accounts payable	7,730	(143,264)
Accrued expenses	(92,259)	96,957
Unearned export application fees	—	(3,000)
Net cash provided by operating activities	<u>\$ 187,965</u>	<u>180,285</u>

See accompanying notes to financial statements.

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

Notes to Financial Statements

June 30, 2005 and 2004

(1) Organization

The Central Interstate Low-Level Radioactive Waste Commission (the Commission) was established in 1984 by an interstate compact among the states of Arkansas, Kansas, Louisiana, Nebraska, and Oklahoma with the 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 (the Compact) by providing for and encouraging the safe and economical management of low-level radioactive waste within the Compact's 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 (GASB) 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. The Commission did not receive funding from the major generators for the years ended June 30, 2005 and 2004.

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.

(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.

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

Notes to Financial Statements

June 30, 2005 and 2004

(d) Restricted Assets

Use of the rebate fund is restricted to payment of certain costs incurred in the establishment of a low-level waste facility or mitigate the impact of low-level radioactive waste disposal facilities on the host state.

The composition of restricted assets in the rebate fund at June 30, 2005 and 2004 is set forth in the following table. Investments are stated at fair value.

	2005	2004
Certificates of deposit	\$ 600,000	600,000
Interest receivable	54,474	39,438
Federal investment trust accounts	309,791	303,965
Total restricted assets in the rebate fund	\$ 964,265	943,403

Interest Rate Risk—The Commission does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates. The federal investment trust accounts are redeemable upon demand and therefore, are not susceptible to interest rate risk.

Credit Risk—The Commission has no investment policy that would further limit its investment choices.

Concentration of Credit Risk—The Commission places no limit on the amount that may be invested in any one issuer.

Included in restricted assets at June 30, 2005 and 2004 are receivables from the State of Nebraska of \$145,334,323 and \$130,000,000, respectively, related to a legal settlement between the Commission and the State of Nebraska (see note 5).

(e) Cash and Cash Equivalents

For purposes of the statements of cash flows, the Commission considers investments with a maturity of three months or less when purchased to be cash equivalents. At June 30, 2005 and 2004, the Commission had \$715,725 and \$513,150, respectively, invested in cash and short-term federal investment trust accounts backed by the full faith of the federal government. At June 30, 2005 and 2004, accounts payable include checks issued but not yet presented for payment totaling \$0 and \$15,398, respectively.

(f) 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 the financial statements and the reported amounts of revenues and expenses

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

Notes to Financial Statements

June 30, 2005 and 2004

during the reporting period. Actual results may differ from the estimates and assumptions used in preparing the financial statements.

(3) Capital Assets

Capital asset activity for the years ended June 30, 2005 and 2004 is shown below:

	<u>Balance at beginning of period</u>	<u>Increases</u>	<u>Decreases</u>	<u>Balance at end of period</u>
2005:				
Equipment	\$ 44,795	—	6,845	37,950
Furniture and fixtures	40,813	—	—	40,813
Accumulated depreciation	(81,345)	(2,470)	(6,845)	(76,970)
	<u>\$ 4,263</u>	<u>(2,470)</u>	<u>—</u>	<u>1,793</u>
2004:				
Equipment	\$ 41,930	2,865	—	44,795
Furniture and fixtures	40,813	—	—	40,813
Accumulated depreciation	(78,487)	(2,858)	—	(81,345)
	<u>\$ 4,256</u>	<u>7</u>	<u>—</u>	<u>4,263</u>

(4) Contractual Agreements

The Commission has an agreement with U.S. 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 postclosure 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 U.S. Ecology. Equity contributions were accomplished by U.S. 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.

The Commission's agreement with the U.S. Ecology will be terminated pursuant to the settlement payment to the U.S. Ecology (see note 5) and its completion of its obligations under the U.S. Ecology agreement and under the agreed upon terms of the settlement payment. The Commission expects the termination of the U.S. Ecology agreement will occur in 2006.

(5) Legal Proceedings

In December 1998, the State of Nebraska denied U.S. 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

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

Notes to Financial Statements

June 30, 2005 and 2004

submitted to the Commission. The Commission joined in a lawsuit with the major generators and U.S. 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 3, 2002 and ended July 31, 2002.

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 major generators and U.S. Ecology filed cross claims against the Commission for equitable subrogation or reimbursement due to this judgment. The State of Nebraska appealed the decision. The parties submitted briefs, and on June 12, 2003, the Eighth Circuit Court of Appeals heard oral argument. On February 18, 2004, the Eighth Circuit Court of Appeals upheld the original judgment and, on April 21, 2004, denied any rehearings of the case.

On August 17, 2004, the State of Nebraska and the Commission reached a settlement to resolve this lawsuit effective August 1, 2004. Under the terms of the agreement, the State of Nebraska agreed to fully pay the settlement, plus interest in the amount of \$140,541,077. Because the settlement resolved the existing contingencies regarding the Commission's receipt of these amounts, the Commission recorded a receivable from the State of Nebraska and recognized nonoperating income in the amount of \$130,000,000 at June 30, 2004. The difference of \$10,541,077 was related to a contingent discount available to the State of Nebraska on its final principal payment. The discount was contingent upon negotiating access to the waste disposal site in the State of Texas for waste generated by the members of the Compact and Nebraska.

On August 1, 2005, the State of Nebraska, pursuant to the settlement agreement, paid the Commission \$145,811,367. As a result, the Commission recorded an additional receivable from the State of Nebraska and recognized nonoperating income at June 30, 2005 for \$15,334,324 for the interest earned on the settlement through June 30, 2005 and for resolving the contingent discount as the State of Nebraska and the Commission failed to negotiate access to the waste disposal site in the State of Texas in the allowable timeframe as defined in the settlement agreement. Interest on the settlement agreement from July 1, 2005 through August 1, 2005 is \$439,191 and will be recognized as income in 2006 when earned. On August 1, 2005, the Commission filed a Satisfaction of Judgment with the federal courts, and therefore, terminating all litigation between the State of Nebraska and the Commission.

The Major Generators took the position that the Commission was legally obligated to reimburse them from the settlement proceeds the portion of the settlement attributable to the money paid to the Commission for the Nebraska project, plus interest. In addition, the Commission determined that certain other parties involved with the Compact were obligated to receive a portion of the settlement proceeds. Therefore, the Commission resolved that \$130,773,514 of the settlement proceeds received on August 1, 2005 would be distributed to the Major Generators, the States of Arkansas, Kansas, Louisiana, and Oklahoma for community improvement funds, and the U.S. Ecology. As a result, the Commission recorded a litigation settlement liability and recognized a nonoperating loss at June 30, 2005 of \$130,773,514. In addition, the Commission resolved to retain the remaining \$15 million of the settlement proceeds with no final decision regarding retention of the money or if the Commission has a legal obligation to distribute it. Since, at this time, the future obligation of the \$15 million is not known, a corresponding liability has not been recorded at June 30, 2005. The Commission believes the use of settlement proceeds is consistent with the Low-Level Radioactive Waste Policy, the Compact, and its legal obligations.

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

Notes to Financial Statements

June 30, 2005 and 2004

In addition, the Commission retained \$37,852 of the settlement proceeds received on August 1, 2005 for court costs, which was recorded at June 30, 2005 as an unrestricted receivable from the State of Nebraska and recognized as nonoperating income.

(6) Commitments

The Commission leases office space under an operating lease. Future minimum lease payments under this lease with an initial term in excess of one year are as follows:

Fiscal year ending:		
2006	\$	11,850

Total rent expense charged to operations was \$28,464 and \$28,092 for the years ended June 30, 2005 and 2004, respectively.



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**Independent Auditors' Report on Internal Control over Financial Reporting and
on Compliance and Other Matters 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, 2005, and have issued our report thereon dated August 5, 2005. 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.

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 an opinion on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be a reportable condition. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the Commission's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. The reportable condition is described as follows:

The Commission lacks appropriate segregation of duties or other mitigating controls over disbursements under \$5,000.

A material weakness is a reportable 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 caused by error or fraud 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. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe that the reportable condition described above is not a material weakness.

Compliance and Other Matters

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 grant agreements, 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*.

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

Omaha, Nebraska

August 5, 2005

