

CENTRAL INTERSTATE LLRW COMMISSION



1999 2000 ANNUAL REPORT

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 and referenced as NDHHS).

The State of Nebraska deemed the application complete for technical review in December 1991. After several years of review, in May 1995, US Ecology submitted to the State 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 1995 and early 1996, the State did not issue a licensing public review schedule or commit to a binding licensing review schedule. Compact law, as well as individual laws in four of the five member states (Kansas law will be in force upon issuance of the license or permit to operate the disposal facility), charges 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 Facility Review Committee for the project 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 18, 1996, Mid-Year Meeting. At the Spring Quarterly Meeting on March 27, 1996, the Commissioners voted to reaffirm their schedule. At the Annual Meeting of the Commission on June 26, 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 which called for the issuance of a Draft Safety Evaluation Report (DSER) and a Draft Environmental Impact Assessment (DEIA) in October 1997. This information was provided to the Commission along with other materials and comments received by the Commission when the Commission conducted its special meeting on August 27, 1996.

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 regarding state compliance with the Commission's two motions.

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

The release of the draft evaluation documents started the 90-day public comment period ending with a public hearing on the evaluation documents. The public hearings were held in early February 1998, in Naper, Nebraska and in Butte, Nebraska (the host community).

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

On August 6, 1998, Nebraska regulators announced in a press conference their "Intent to Deny" US Ecology's license application to construct, operate, and close a LLRW disposal facility in Butte, Nebraska. Public hearings were held in Naper, Nebraska November 9 and 10, 1998 and in Butte, Nebraska, November 11 and 12, 1998.

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

After the issuance of the denial decision and also in December 1999, three of the four major waste generators of the Region filed a civil rights lawsuit against the State of Nebraska and its agents. The major generators named the Central Interstate Low-Level Radioactive Waste Commission as a defendant as well. They claimed injury due to the "bad faith" review by the State's regulators.

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At the Commission's Mid-Year meeting January 13 and 27, 1999, various actions were taken in response to the denial decision by Nebraska regulators. Those actions included the initiation of cost-cutting measures and instruction of the Commission's legal counsel and US Ecology to request a contested case hearing challenging the licensing decision.

On January 15, 1999, US Ecology filed petitions with the regulatory agencies seeking a contested case hearing to challenge the license decision. On January 19, 1999, counsel for the Commission filed petitions to intervene in the requested contested case hearings.

US Ecology Lincoln and Butte, Nebraska offices were closed March 31, 1999. Two of US Ecology's staff members were available through the end of April to finalize project suspension arrangements.

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 on license review activities.

In May 1999, Nebraska's legislature passed LB530. Governor Mike Johanns signed the Bill withdrawing Nebraska from the Central Interstate Compact effective August 27, 1999. Commissioners voted at the June 1999 Annual Meeting to direct outside legal counsel to research the ramifications of Nebraska's withdrawal.

Project Status Update

Commissioners held a Special Meeting to comply with the Commission's Rule 23, giving Nebraska an opportunity to explain their decision to withdraw from the Compact, on September 22, 1999.

Significant Events Recap

Commission Meetings

- Special Meeting - Rule 23, September 22, 1999

Background

On May 6, 1999, the Nebraska Legislature adopted Legislative Bill 530 withdrawing Nebraska from the Central Interstate Low-Level Radioactive Waste Compact Commission. The Nebraska Governor signed the Bill into law.

At the June 9, 1999 Annual Meeting, Commissioners requested outside counsel to study issues relating to Nebraska's withdrawal from the Compact. Pursuant to the Commission's Rule 23, Governor Johanns notified Chairman Henry and the other party states' governors, that the statute withdrawing Nebraska from the Compact became effective August 28, 1999.

Rule 23 of the Central Interstate LLRW Commission relates to the withdrawal of a compact member state or the revocation of membership by the Commission. The purpose of the Rule is to specify the process by which a member state can withdraw from the Compact and the penalties the Commission may enforce on the withdrawing state. The Rule also instructs that upon receiving notice of the party state's withdrawal the Commission Chairman shall within 30 days convene a special meeting of the Commission. The withdrawing state shall be notified of this special meeting and shall have the opportunity to explain its decision to withdraw.

On September 7, 1999 Commission Chairman Michael Henry responded to the Governor's letter, acknowledging the receipt of the withdrawal notice and invited the State of Nebraska to attend the Special Meeting pursuant to Rule 23. The Chairman assured the Governor that it was not the purpose of Rule 23 to "consider, approve, or reject a state's voluntary withdrawal from the Compact," but rather "to consider whether at the time of withdrawal Nebraska has left unfulfilled or breached its duties prescribed under the Compact."

In a letter dated September 17, 1999 Assistant Attorney General for the State of Nebraska and Special Assistant Attorney for the State of Nebraska responded to Chairman Henry's letter of invitation. The letter advised the Chairman that they would present documents that included Legislative Bill 530, a copy of Governor's notice of withdrawal, and copies of the letters sent by Governor Johanns to each of the party state governors. The letter stated that: "The tendered documentation explains the State's action and shows that Nebraska has fully satisfied its Compact obligations regarding withdrawal. No further explanation is necessary, and no sanctions for withdrawal are in order."

Meeting

The Commission convened a Special Meeting to comply with the Commission's Rule 23 on September 22, 1999. The meeting commenced with general business being conducted with the approval of export applications, the annual audit for 1998-1999, prepared by KPMG, LLP was received and the Chairman reported on his meeting with the South Carolina Compact Delegation and indicated that "we are not in the running."

Representatives for the State of Nebraska and the Governor's office were in attendance and made a brief statement while presenting a certified copy of Legislative Bill 530, withdrawing the State of Nebraska from the Central Interstate Compact and copies of the letters sent by Governor Johanns to the governors of each compact state and letters from Governor Johanns to Chairman Henry.

The Commission's outside legal counsel presented options on how to proceed according to Commission's Rule 23. Counsel repeated the State's claim to "substantial evidence" that it "has not failed to comply with the terms of the Compact or to fulfill its obligations," and made the recommendation for the Commissioners to require Nebraska to furnish the documents proving it innocent of the bad faith allegations. The Commission's decision was to request the documents. The meeting was recessed with a future date to be determined by the Chairman.

- Mid-Year Meeting, January 12, 2000

The Central Interstate LLRW Commission's Mid-Year meeting was held in New Orleans, Louisiana on January 12, 2000. The Commission voted to approve export applications, meeting minutes, reports, US Ecology Year 2000 Funding Request, and the Financial Consultant's contract.

A panel of three sat before the Commission as required by § 5.04 US Ecology Contract Review of Options and Alternatives. The panel consisted of representatives of the utilities, US Ecology, and the Commission. Discussion was centered around the possible closing of the Barnwell, SC disposal facility and the application for a Class B/C license by Envirocare of Utah. Also discussed was the effects the closing might have on the minor generators of the Central Interstate Compact.

- Special Meeting, April 12, 2000

A special meeting was held via telephone in the Commission's Lincoln, Nebraska office on April 12, 2000. Items taken action on were the approval of export applications and budgetary line-item adjustments to fiscal year 1999-2000 Administrative Budget to accommodate increased legal fees.

- Annual Meeting, June 7, 2000



The retiring Oklahoma Commissioner, H. A. Caves, was presented with a plaque of gratitude for his years of faithful service to the Commission by Chairman Henry.

Louisiana Commissioner, Michael E. Henry, was elected for a second term to act as Chairman for fiscal year 2000-2001. The Mid-Year meeting was tentatively scheduled for January 24, 2001, in Oklahoma City, Oklahoma.

- Special Meeting, June 28, 1999

A special teleconference meeting of the Commission was held on June 28, 2000. Export applications were submitted by 16 generators for approval. The Commission approved the applications for fiscal year 2000-2001.

The Commission voted to reimburse the contributing major generators \$300,000 of the \$400,000 used to secure the Rebate Settlement Guaranty Fund created under paragraph 10 of the rebate case settlement agreement dated June 20, 1996. The Commission replaced the returned money with rebate funds to maintain the \$1 million Guaranty Fund.

FRC Meetings

The FRC held a teleconference meeting on November 18, 1998. Committee received US Ecology's Developers Report and the Action Items Status Update report. It was decided to postpone US Ecology's 1999 Annual Work Plan until possibly January 1999. Due to the Intent to Deny decision, US Ecology was directed to work under the 1998 Annual Work Plan. US Ecology planned to meet with the major generators to discuss trimming some budget items. US Ecology presented a revised funding request for the fourth quarter and approval was held over until the next FRC meeting.

Due to the events occurring during this reporting period, November 18, 1998, was the last FRC meeting.

State Agencies

U.S. District Judge Richard G. Kopf signed an order December 17, 1999 authorizing a computer expert to retrieve missing e-mail files from the State of Nebraska's computers. Judge Kopf also directed the State to prepare a report on how much potential evidence was lost in the bad faith lawsuit. The report completed by the State's Attorney General's office reported that the deletion was inadvertent and the loss appears to be minimal. Apparently, the error occurred during the change of administration in the governor's office. The new administration was not notified of the extension on Judge Kopf's previous order to preserve the records.

Judge Kopf appointed a special master to supervise the attempt to recover the missing e-mail.

The Nebraska Department of Environmental Quality requested an additional \$4 million for its low-level radioactive waste program for the year 2000. According to a deficit request submitted to Governor Johanns, most of the cost is associated with legal expenses. The request resulted from U.S. District Judge Richard Kopf's April 16, 1999 order that the state cannot collect money from public utilities while the lawsuit is pending.

The Central Interstate Low-Level Radioactive Waste Commission Annual Meeting was held June 7, 2000, in Lincoln. US Ecology Funding Request for Fiscal Year 2000-2001 was approved. The Funding Request had been revised from its original calendar year estimates to coincide with the Commission's fiscal year. The Commission did not renew the Project Manager's contract due to the lack of technical work.

The export fee schedule for fiscal year 2000-2001 was approved with a \$6,000 increase to the utility / major generator category. The Commissioners approved the Administrative Budget for fiscal year 2000-2001 with an anticipated increase to legal fees.

The Commissioners voted to have prepared the necessary documentation to propose the return of the Major Generators' contribution to the securement of the \$1 million Guaranty Fund required by the Settlement Agreement of 1996.

Legislature

- Community Improvement Cash Funds Legislation

Legislative Bill 606, extending through calendar year 1999, was introduced and advanced to the general file of the Unicameral during the 1999 session. This Bill remains on general file and was not acted upon during the 2000 session.

The law, authorized and established in 1987, ensures continued funding assistance for the Village of Bute (Host Community) and a number of other local political subdivisions in Boyd County which are impacted by the selection of the proposed disposal facility site. Annual amounts of \$75,000 each are to be provided by the states of Arkansas, Kansas, Oklahoma, and Louisiana upon annual passage of the statute by the Nebraska Legislature.

- Nebraska Attorney General Requests Arent-Fox Report

In September 1998, the Executive Board of the Nebraska Legislative Council contracted Arent, Fox, Kintner, Plotkin & Kahn, a Washington, DC law firm to perform an analysis of the legal consequences of withdrawing from the Central Interstate Low-Level Radioactive Waste Compact. An executive summary of the report was publicly issued in January 1999 and indicated that Nebraska is responsible for the \$25,000 annual membership dues over the five-year withdrawal period totaling \$125,000.

After Governor Johanns signed the legislation withdrawing the state, Nebraska's Attorney General requested the report to assist him in defending the state against any potential lawsuits filed due to the withdrawal from the Compact. Nebraska lawmakers debated if providing the Attorney General's office with the report would constitute a waiver of the attorney-client privilege consequently making the report a public document. On July 20, 1999, the Nebraska Legislature's Executive Board voted unanimously to provide the state's Attorney General with the report.

NDEQ 1999 Annual Report to the Nebraska Legislature

The Nebraska Department of Environmental Quality stated in their annual report to the Nebraska Legislature that since March 8, 1999, the NDEQ has paid the LLW Program expenses from the State's general fund budget.

The NDEQ report, submitted December 1, 1999, also reported that since the Local Monitoring Committee funds were not collected from the developer, the 1999 Legislature appropriated \$50,000 of State general funds for the Committee's expenses.

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 on behalf of NDEQ and the Nebraska Department of Health and Human Services (NDHHS).

Developer-US Ecology

The Commissioners voted to approve funding for the continued maintenance of the Boyd County disposal facility site as requested by US Ecology to maintain site viability for future disposal facility development purposes. The Commission-approved budget provided for costs associated with the maintenance of the proposed facility site including such required activities as mowing, noxious weed control, site surveillance, property tax payments, and other items.

US Ecology's representative reported at the Annual Meeting that an inspection of the property had been performed. The native grasses planted three years ago have germinated. The water that has delayed the completion of the removal of the remaining two monitoring wells has subsided. It is anticipated

that with the dry weather, water levels will continue to subside. US Ecology will continue to monitor and report to the Commission any changes in the site status.

Another item reported on was the expiring wetland mitigation permit issued by the Corps of Engineers. A two-year extension was granted bringing the expiration date of the permit to December 2001.

US Ecology vs. State of Nebraska (whether mitigating a wetland less than one acre in size constituted the start of facility construction) was settled by the Supreme Court of Nebraska in October, 1999. The court reversed a lower court's judgment in favor of US Ecology and remanded the case with directions to dismiss. According to the state supreme court, "[d]eclaratory judgment cannot be used to decide the legal effect of a state of facts which are future, contingent, or uncertain." In the context of this particular case this means that US Ecology would have had to actually fill the wetland and then see whether or not the state would actually implement it's stated threat to deny the license on grounds of starting construction without a license. US Ecology will continue to monitor developments on both the state and federal levels

for any actions which could affect the viability / integrity of the license application. This includes potential state regulatory changes and federal actions which could affect the status of the Low-Level Radioactive Waste Policy Act.

Waste Report

- GAO Report Released

On September 23, 1999, the U.S. General Accounting Office (GAO) released the report "Low-Level Radioactive Wastes: States Are Not Developing Disposal Facilities" prepared at the request of Senator Frank Murkowski (R-AK) who chairs the Senate Committee on Energy and Natural Resources. In a chapter entitled "Future Access Concerns Raise Questions About the Appropriate Approach for Managing Wastes", three options available to Congress are analyzed. The three options are retaining the compact approach, repealing the compact legislation, and making DOE responsible for disposal of commercial low-level radioactive waste.

Reasons for not developing disposal facilities sited in the report were public and political opposition, declining waste volumes, high cost of disposal facilities, expressed interest in long-term storage, and most waste generators currently have access to a facility.

- Telephone Poll

The Commission's office did not conduct a formal waste survey for the 1999-2000 reporting period. However, with the possible closing of the Barnwell, S.C. disposal facility an informal telephone poll was taken of 15 minor generators for the purpose of determining how the closing of Barnwell might affect their facility.

The generators were chosen based on their applications for export permits during fiscal year 1999 and / fiscal year 2000. The majority of generators estimated that they would be able to store waste for six months to three years. Two generators indicated they would be in trouble immediately because they have no storage and no plans to build storage. One generator said that animal carcasses would be an immediate problem due to regulations on incineration versus cremation. Three indicated they have built on-site storage and could safely store waste for longer than three years. One generator could store waste in the laboratory for approximately one year. One generator uses cargo containers as a method of providing storage.

Many explained their efforts in trying new technologies and minimization strategies that include the purchase of industrial compactors and incinerators to reduce volume. One university is considering charging their researchers a fee for disposal / storage of waste to encourage minimization.

- Disposal Information

Disposal information included in this report is from the National Low-Level Waste Management Program's web site. The site provides both national and state-specific disposal data of low-level radioactive waste. (<http://www.inel.gov/national/national.html>) Data is also presented on the MIMS system at <http://mims.inel.gov> through the current month.

States	Volume (ft³)	Activity (curies)
Arkansas	1574.11	5.18
Kansas	691.33	918.33
Louisiana	3893.18	1340.68
Nebraska	1484.45	108.14
Oklahoma	494.34	.33
1999/2000 Totals	8137.41	2372.66

During this reporting period, the generators of low-level radioactive waste in the Central Interstate Region have had access to out-of-region disposal facilities located at Barnwell, South Carolina and Clive, Utah.

The Commission approved 26 export applications for this reporting period.

- Barnwell, S.C.

On June 9, 2000, GTS Duratek, Inc. announced the completion of the acquisition of Chem-Nuclear Systems. South Carolina joins the Northeast LLRW Compact to form the Atlantic LLRW Compact to become effective July 1, 2000. This union will close the Barnwell facility to non- Atlantic Compact generators at the end of 2008.

A copy of the new rate schedules, as well as other information about the facility, maybe accessed on the South Carolina Energy Office's LLRW Disposal Program Web Page at <http://www.state.sc.us/energy/llrwdisposal.htm>.

- Envirocare of Utah

Envirocare of Utah's Class B and C license application is currently undergoing its technical review by the Utah Division of Radiation Control. The duration of the technical review will depend on how quickly Envirocare responds to the 56 question interrogatory. Answers to 22 of the questions have been submitted. After the technical review is completed an approval will be needed by the State's legislature and governor. The next meeting of the Utah legislature will be in January 2001.

Information and Education

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

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

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

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

Summary of Litigation

During the past several years the Commission 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.

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

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

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

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

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

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

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

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

On November 23, 1998, Judge Kopf issued a Memorandum and Judgment in favor of the Commission. The opinion holds that Nebraska does not have veto power over export applications, and refuses to decide issues related to future import issues. On December 8, 1998,

Nebraska filed a motion for new trial, which was overruled and Nebraska has appealed to the Eighth Circuit Court of Appeals. On April 4, 2000, the appellate court affirmed the entire ruling and the case is now completed.

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

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

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

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

Shortly thereafter, the Commission, at its January 1999 meeting, authorized its outside counsel to ask the Court to realign it as a plaintiff and essentially join in the claims originally made by the major generators. That has been done, and the Commission, in its own claim against the State of Nebraska, contended that Nebraska had operated in bad faith in violation of the compact which is both a federal law and has the characteristics of a contract between parties. A temporary injunction was obtained by the plaintiffs preventing any of the defendant parties from destroying any documents, and that has been communicated to all the State officials involved.

The plaintiffs, including the Commission, then moved for a temporary restraining order and then a preliminary injunction against the State of Nebraska and the other defendants, prohibiting them from continuing with the contested case proceeding, and also prohibiting them from trying to charge the costs of any aspect of the low-level radioactive waste activities against the plaintiffs. The allegation was that more than \$75 million had been spent on the project by the original plaintiffs in this action (not counting the additional \$20 million or so spent by NPPD which has not joined in the case), and that allowing the State to continue charging everything to the plaintiffs was simply a continuation of the bad faith and illegality of Nebraska's approach to its role as the host state. The Commission joined in all those motions for injunctive relief.

On April 16, 1999, United States District Judge Richard Kopf granted the preliminary injunction, making extensive findings of probable bad faith by Nebraska in a 38-page opinion. The requirements for preliminary injunctive relief include a finding of probable ultimate liability, and the Court therefore was obliged to make that call and found very substantial and itemized evidence of various bad faith and political influence on the licensing proceeding. The State has appealed the preliminary injunction; the Commission and the State have filed their opening 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. It will be argued in October, 2000. Assuming the Eighth Circuit rules similarly to its April, 2000 ruling, it may be expected that the appeal by Nebraska will fail. One issue in this appeal concerns whether Nebraska might have an immunity defense as to the money damages claim against it, even if it does not have immunity as to all the rest of the case. The Eighth Circuit may or may not decide that issue. After the Eighth Circuit decides this second appeal of Nebraska, unless the losing party persuades the U.S. Supreme Court to consider the issues, the case will be remanded to the Nebraska U.S. District Court for further proceedings, including discovery and trial. The State has so far resisted all efforts to do discovery by taking the two appeals, so the overall schedule will be reset when the case returns to the U.S. District Court. That should be in early 2001.

Now, it would appear trial is likely in 2002, after the discovery is completed.

Billings Review

The annual Billings Review of license application work performed by USE was not performed for this reporting period due to the suspension of project activities. The project was "moth balled" till further notice due to the license denial decision of the State of Nebraska in December 1998 and the resulting lawsuits.

Status of Commission Funds as of June 30, 2000

Rebate Funds (held in certificate of deposits)

Rebate funds can only be spent to:

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

Commission's rebate funds not obligated (CIC Acct) \$229,461 *Principal*

Must annually report the expenditures to the Department of Energy.
The Commission does not have to report to DOE the use or expenditure of the interest the CIC earns on the rebate funds.

Commission's "Guaranty Fund" rebate case settlement funds obligated (CIC Acct) \$600,000 *Principal*

Commission's \$600K in Guaranty Fund is for the sole purpose of guaranteeing timely payment to the state for licensing costs billed to US Ecology; and must annually report the expenditures to the Department of Energy.

\$829,461 *Total Principal*

Major Generator money in the "Guaranty Fund" is \$400,000 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.

The Commissioners voted at their June 28, 2000 meeting to return \$300,000 to the major generators.

Commission Expense Report and Budget for Fiscal Year 2000-2001

Expense	FY97-98	FY98-99	FY99-00 Budget (1)	FY99-00 Actual	FY00-01 Budget
Salaries & Benefits	244,819	147,475	72,331	69,796	74,776
Rent	35,380	33,187	29,000	27,773	29,000
Telephone	9,494	6,279	6,000	5,328	6,000
Postage	3,777	2,385	1,800	1,189	2,000
Copy & Printing	728	570	600	130	500
Machine Lease & Maintenance	7,479	8,565	5,500	4,990	5,000

Meeting Transcriptions	3,348	3,645	4,000	1,826	4,000
Dues & Subscriptions	544	312	300	277	1,000
Office Equipment & Supplies	7,988	3,334	5,000	4,202	5,000
Travel & Meeting Expense	19,701	11,063	10,000	9,252	11,000
Insurance	3,916	3,578	4,000	3,982	4,000
Accounting	27,160	27,906	36,700	36,671	25,000
Legal Fees	205,046	302,761	311,000	277,550	300,000
Miscellaneous	43	68	500	0	500
Project Manager	178,194	42,275	23,000	22,800	0
Cash Reserve	0	0	0	0	23,000
Butte Site Maintenance			25,380	17,388	34,000
Total	747,617	596,403	535,111	483,154	524,776
(1) Amended April 12, 2000	-	-	-	-	-

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

Financial Statements

June 30, 2000 and 1999

(With Independent Auditors' Report Thereon)

KPMG LLP

233 South 13th Street

Suite 1600

Lincoln, NE 68508-2041

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, 2000 and 1999, and the related statements of revenues, expenses and retained earnings and cash flows for the years then ended. These financial statements are the responsibility of the Commission's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of American 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, 2000 and 1999, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with Government Auditing Standards, we have also issued our report dated July 21, 2000 on our consideration of the Commission's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants. That report is an integral part of an integral part of an audit performed in accordance with Government Auditing Standards and should be read in conjunction with this report in considering the results of our audit.

July 21, 2000

KPMG LLP

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

Balance Sheets

June 30, 2000 and 1999

	<u>2000</u>	<u>1999</u>
Assets		
Current assets:		
Cash, primarily interest-bearing accounts	\$ 462,651	508,372
Restricted assets:		
Community improvement cash, interest-bearing account	—	75,000
Rebate fund, certificates of deposit	440,991	386,566
Guarantee fund, certificates of deposit	1,000,000	1,000,000
Project fund:		
Cash, interest-bearing account	13,456	9,011
Accounts receivable	—	17,379
Total project fund	<u>13,456</u>	<u>26,390</u>
Total restricted assets	<u>1,454,447</u>	<u>1,487,956</u>
Property and equipment	78,429	76,988
Less accumulated depreciation	<u>72,389</u>	<u>68,924</u>
Net property and equipment	<u>6,040</u>	<u>8,064</u>
Total assets	<u>\$ 1,923,138</u>	<u>2,004,392</u>
Liabilities and Retained Earnings		
Liabilities:		
Current liabilities:		
Community improvement fees payable	\$ —	75,000
Accounts payable	25,601	104,615
Accrued expenses	4,668	3,536
Total current liabilities	30,269	183,151
Unearned export application fees	<u>347,125</u>	<u>303,950</u>
Total liabilities	377,394	487,101
Retained earnings	1,545,744	1,517,291
Commitments and contingencies		
Total liabilities and retained earnings	<u>\$ 1,923,138</u>	<u>2,004,392</u>

See accompanying notes to financial statements.

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

Statements of Revenues, Expenses and Retained Earnings

Years ended June 30, 2000 and 1999

	<u>2000</u>	<u>1999</u>
Revenues:		
Funding from major generators	\$ —	3,953,355
Commission member fees	125,000	125,000
Export application fees	306,950	343,675
Other	156	5,244
Total revenues	<u>432,106</u>	<u>4,427,274</u>
Operating expenses:		
US Ecology	—	2,067,255
Nebraska Department of Environmental Quality	—	1,887,083
Salaries and benefits	69,796	141,882
Travel	9,252	11,627
Professional services	338,409	376,461
Office and administrative	17,994	17,526
Rent	27,773	33,187
Depreciation	3,698	3,977
US Ecology site maintenance	9,524	—
Other	242	1,017
Total operating expenses	<u>476,688</u>	<u>4,540,015</u>
Loss from operations	(44,582)	(112,741)
Interest income	<u>73,035</u>	<u>82,070</u>
Net revenue (loss)	28,453	(30,671)
Retained earnings, beginning of year	<u>1,517,291</u>	<u>1,547,962</u>
Retained earnings, end of year	<u>\$ 1,545,744</u>	<u>1,517,291</u>

See accompanying notes to financial statements.

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

Statements of Cash Flows

Years ended June 30, 2000 and 1999

	<u>2000</u>	<u>1999</u>
Cash flows from operating activities:		
Loss from operations	\$ (44,582)	(112,741)
Adjustments to reconcile loss from operations to cash used in operating activities:		
Depreciation	3,698	3,977
Changes in assets and liabilities:		
Accounts receivable	17,379	490,407
Other current assets	—	364
Community improvement fees payable	(75,000)	(225,000)
Other current liabilities	(77,882)	(706,559)
Unearned export application fees	43,175	303,950
Total adjustments	<u>(88,630)</u>	<u>(132,861)</u>
Net cash used in operating activities	<u>(133,212)</u>	<u>(245,602)</u>
Cash flows from investing activities:		
Interest received on cash and certificates of deposit	73,035	82,070
Purchase of certificates of deposit	(54,425)	(52,055)
Net purchases of property and equipment	<u>(1,674)</u>	<u>—</u>
Net cash provided by investing activities	<u>16,936</u>	<u>30,015</u>
Net decrease in cash	(116,276)	(215,587)
Cash and interest-bearing accounts, at beginning of year	<u>592,383</u>	<u>807,970</u>
Cash and interest-bearing accounts, at end of year	\$ <u><u>476,107</u></u>	<u><u>592,383</u></u>
Reconciliation to balance sheets:		
Cash	\$ 462,651	508,372
Community improvement cash	—	75,000
Project fund cash	<u>13,456</u>	<u>9,011</u>
Total cash and interest-bearing accounts, at end of year	\$ <u><u>476,107</u></u>	<u><u>592,383</u></u>

See accompanying notes to financial statements.

Notes to Financial Statements

(1) Organization

The Central Interstate Low-Level Radioactive Waste Commission (Commission) was established in 1984 by an interstate compact among the states of Arkansas, Kansas, Louisiana, Nebraska and Oklahoma with consent of Congress through the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act. The purpose of the Commission is to carry out the mandate of the Central Interstate Low-Level Radioactive Waste Compact by providing for and encouraging the safe and economical management of low-level radioactive wastes within the compact region. The Commission is an instrumentality of the compact member states and as such, is exempt from Federal and state income taxes under Section 115 of the Internal Revenue Code.

(2) Summary of Significant Accounting Policies

Basis of Accounting

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

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

Revenue Recognition

a) Funding from Major Generators

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

b) Export Application Fees

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

Property and Equipment

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

Restricted Assets

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

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

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

The interest income earned on the \$400,000 deposited in the guarantee fund by the major generators is remitted directly to the major generators. The interest income earned on the remaining \$600,000 is periodically transferred to the rebate fund.

Use of Estimates

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

Reclassification

Certain balances from 1999 have been reclassified to conform with the current year presentation.

(3) Cash and Certificates of Deposit

At June 30, 2000 and 1999, the Commission had cash and certificates of deposit of \$1,917,098 and \$1,978,949, respectively. At June 30, 2000, administrative, community improvement and project funding accounts included demand deposits of \$42,242, which was covered by FDIC deposit insurance. Also at June 30, 2000, administrative, community improvement and project funding accounts included \$417,865 invested in short-term federal investment trust accounts backed by the full faith of the federal government. At June 30, 1999, administrative, community improvement and project funding accounts included demand deposits of \$306,979, of which \$100,000 was covered by FDIC deposit insurance and \$206,979 as uninsured. Also at June 30, 1999, administrative, community improvement and project funding accounts included \$285,404 invested in short-term federal investment trust accounts backed by the full faith of the federal government. At June 30, 2000 and 1999, rebate fund certificates of deposit of \$100,000 were covered by FDIC deposit insurance and the remaining \$1,340,991 and \$1,286,566, respectively, were collateralized by government securities / agencies held in joint custody at the federal reserve, by the pledging bank, in the Commission's name.

(4) Contractual Agreements

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

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

(5) Lease

Rent expense under an operating lease for office space was \$27,773 and \$33,187 for the years ended June 30, 2000 and 1999, respectively. The future minimum rental payments are in the amount of \$17,046 for the year ended June 30, 2001.

(6) Contingencies

In December 1998, the State of Nebraska denied US Ecology's license to build and operate the facility. In June 1999, Nebraska passed a law which will withdraw Nebraska from the Compact effective in August 1999. Nebraska would remain a member for up to five years after their notice to withdraw is submitted to the Commission. The Compact has joined in a lawsuit with the major generators against the State of Nebraska for licensing of the site or damages in for a bad-faith denial by Nebraska. The financial impact of these events are uncertain.

(7) Subsequent Events

On July 7, 2000, the Commission reimbursed \$300,000 to the major generators for their contribution to the guarantee fund. The Commission replenished the guarantee fund by transferring \$300,000 from the rebate fund.

**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, 2000 and have issued our report thereon dated July 21, 2000. 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.

July 21, 2000

KPMG LLP