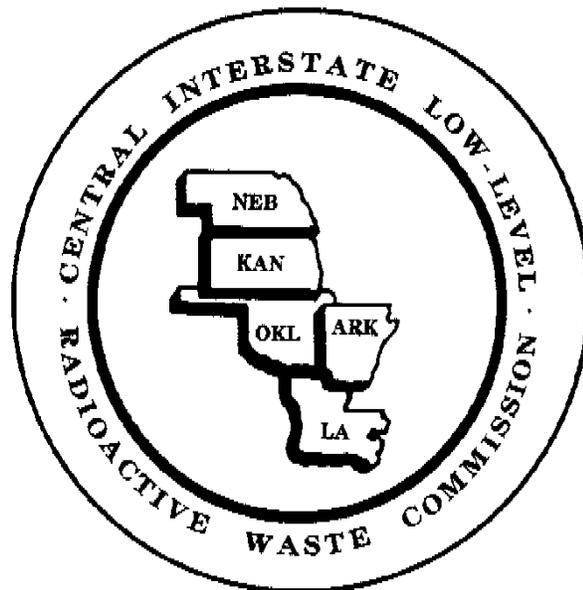


# **Central Interstate Low-Level Radioactive Waste Commission**



**Annual Report  
2001-2002**



**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. In May 1995, after several years of review, US Ecology submitted its responses to the fourth and final round of the state's technical comments.

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

requested it. State evaluations and future decisions are to be based on this final product.

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

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 At the Annual Meeting of the Commission in June 1996 the Commissioners rescinded the Commission's technical review schedule and unanimously approved setting a Special Commission Meeting on August 27, 1996 for the purpose of " .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

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

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

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

On November 27, 1996 the State of Nebraska filed suit against the Commission alleging that it was aggrieved by the Commission's two motions.

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

evaluation documents.

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

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

On August 6, 1998 Nebraska regulators announced in a press conference their "Intent

to Deny" US Ecology's license application to construct, operate, and close a LLRW disposal facility in Butte, Nebraska. Public hearings were held in Naper, Nebraska November 9 and 10, 1998 and in Butte, Nebraska, November 11 and 12, 1998.

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

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

At the Commission's Mid-Year meeting, held on 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. US Ecology filed petitions with the

regulatory agencies on January 15, 1999. The Commission filed to intervene in the requested contested case hearings on January 19, 1999. Also in January 1999 the Commission asked counsel to ask the Court to realign it as a plaintiff in the "bad faith" claims made by the major generators against the State.

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

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

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

Rule 23 of the Central Interstate LLRW Compact Commission addresses the

withdrawal of a compact member state. To comply with Rule 23, The Commission convened a special meeting on September 22, 1999 to provide the state the opportunity to explain its withdrawal. The State of Nebraska's presentation included Legislative Bill 530 and the notice of withdrawal. A motion was made during the meeting requesting documents from the State of Nebraska for the Commission's use in determining if Nebraska acted in good faith as a compact member state and as the compact host state. The request stipulated a 120-day deadline. The meeting was recessed to continue at a future date to be determined by the Chair.

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 log would not be provided for the Rule 23 proceedings.

On May 29, 2001 the Commission received its first request for the production of

documents in the lawsuit against Nebraska.

## **Project Status Update**

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. Final arguments are scheduled for September 10, 2002 with a decision expected by the end of the month.



## Significant Events Recap

### Commission Meetings

- Emergency Telephone Meeting  
December 19, 2001

An emergency meeting was held via teleconference for the purpose of reviewing one export application submitted for fiscal year 1999-2000. The Arkansas generator had shipped for permanent disposal a small amount of llrw from the Region prior to applying for an export authorization.

- Mid-Year Meeting  
January 23, 2002

The Central Interstate LLRW Commission's Mid-Year meeting was held in Little Rock, Arkansas on January 23, 2002. The Commission voted to approve three export applications, meeting minutes, reports, budget adjustments and the Financial Consultant's contract.

No formal panel assembled for discussion on the required

§ 5.04 US Ecology Contract Review of Options and Alternatives. Instead, the Nebraska Commissioner made a statement indicating that the current system is not working and that isotope volumes were needed to facilitate a study of assured isolation storage.

No action was taken by the Commission on The Central Midwest Interregional Facility Access Agreement or the KPMG Audit for fiscal year 2000-2001.

The Commission's Administrator reported on the document production progress. The State of Nebraska had identified over 100,000 pages to be provided from the Commission's Executive Office in the litigation discovery efforts.

Outside legal counsel reported that the "sovereign immunity" defense by the State had been rejected twice by the U.S. District Court of Nebraska. The Eighth Circuit Court of Appeals agreed with the District Court both times and The U.S. Supreme Court denied to review the Eighth Circuit's decisions. He also indicated that the State's other defense strategy was to prove the license decision was not politically influenced. Legal counsel also reported on the

"spoilation" issue where the State's e-mails from 1998 were overwritten. The Court ruled for the Commission and indicated that the State would bare the costs for the attorneys' and Special Master needed to resolve the issue. The major generators' civil rights claims were barred by sovereign immunity by the Court, but were allowed to remain in the lawsuit by a third party complaint against the Commission.

The Commission voted to remain a member of the LLW Forum.

The Administrative Budget was adjusted to accomodate the continued use of temporary help in the discovery effort, to provide funds for a part-time permanent position, and to pay the increased membership dues of the LLW Forum.

- Annual Meeting  
June 4, 2002

The Annual Meeting of the Commission was held in Lincoln, Nebraska.

The Commissioners approved one export application for fiscal year 2001-2002 and meeting minutes. KPMG's audit of the Commission for fiscal year 2000-2001 was approved.

The Chairman gave a brief

explanation before introducing the Administrative Budget adjustments for fiscal year 2001-2002 and the Administrative Budget for fiscal year 2002-2003. He stated that the Commission would show a operating loss that was attributable to the under-estimation of litigation costs but would not have a cash shortfall due to expected receipts from export applications for the coming fiscal year. The Commissioners approved the Budget adjustments and the new Budget.

Export fees for fiscal year 2002-2003. The Major Generator category was set at \$94,000 contingent on a seventh major generator. No changes were made to the fees for the other categories. remained the same.

US Ecology provided the Developer's Report and indicated that the two remaining wells might possibly be closed this year due to the dry conditions. The Commission approved US Ecology's Funding Request for the new fiscal year with adjustments for the continuation of geologic core sample storage costs.

Outside legal counsel submitted a written report to the Commission due to the

commencement of the trial on June 3, 2002.

The Oklahoma Commissioner was voted in as Chairman.

- Special Meeting  
July 2, 2002

A special meeting was held via teleconference for the purpose of reviewing export applications submitted for fiscal year 2002-2003. The Commission approved 2 federal export applications, 12 non-federal applications, and 7 applications in the major generator / utilities category.

- Emergency Meeting  
July 26, 2002

An emergency teleconference meeting of the Commission was held. One non-federal generator submitted an export application for fiscal year 2002-2003 and one federal generator submitted an export application for fiscal year 2001-2002. The emergency declaration indicated that the federal generator had shipped llrw from the Central States Region without prior authorization and the waste had subsequently become part of a shipment for permanent disposal at Envirocare. The Commission approved both export applications.

## Host State- Nebraska

On May 29, 2001 the Commission received its first request for the production of documents in the Federal lawsuit against Nebraska. Members of the State's legal team spent approximately two weeks in June reviewing the Commission's central files. Over 100,000 pages were marked in the discovery effort.

Discovery efforts continued through March 2002 with the review of key personnel's documents and depositions.

Trial on the Federal lawsuit began June 3, 2002 and lasted approximately eight weeks.

The State of Nebraska has spent approximately \$17 million on its defense and during the most recent Special Session of the Nebraska Legislature has requested another \$4.1 million.

## Legislature

Two items came before the Nebraska Legislature during their Regular Session. An appropriations Bill won acceptance that included \$4 million in additional funds for the lawsuit. The second item

was a Bill that would revoke all contracts and agreements entered into through actions of the Central Interstate Low-Level Radioactive Waste Compact Commission after the date of notification of the intent to withdraw by the State. This Bill was postponed indefinitely.

The Nebraska Governor has called for two Special Sessions of the Legislature to address Budget concerns. As of this writing, another \$4.1 million for defense of the lawsuit is being considered.

### **NDEQ 2001 Annual Report**

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

The LLRW Program historically administered aid to the Local Monitoring Committee and the Community Improvement Fund from funds collected from the

developer. The NDEQ Annual Report to the Legislature submitted December 1, 2001 reported that no funds have been collected since the March 1999 restraining Court order from US Ecology for this purpose. The Department has paid LLRW Program expenses from the State's general fund budget. The report indicates that the actual funds expended in fiscal year 2001 totaled \$2,428,277 for the Low-Level Radioactive Waste Program.

### **Developer-US Ecology**

The Commissioners voted to approve funding for the new fiscal year 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. The US Ecology budget also provided for use of consultants and contractors in support of the current litigation

US Ecology's representative reported at the Mid-Year Meeting that the Butte site was in stable condition. Minor weed spraying was required and the native grasses planted in 1997 have matured and are helping to inhibit weed growth. No new State regulatory changes had occurred that could affect the Project. The wetland mitigation permit expired in December 2001 and US Ecology was advised by the Corps of Engineers that a new ruling eliminated the Corps authority to regulate work on the site property. US Ecology's former Nebraska Project Manager worked with the attorney's and consultants on the current litigation.

US Ecology's representative reported at the Annual Meeting that an inspection of the property had been performed. The native grasses planted four years ago are doing very well. 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 and that possibly the well removal could be completed later this year. US Ecology will continue to monitor and report to the Commission any changes in the site status. US Ecology's contractors and legal counsel

performed work in support of the lawsuit.

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.

During both the mid-year and annual meetings US Ecology's representative reported that American Ecology's new management team has, by controlling costs and expanding its core business of radioactive and hazardous waste disposal, continued to be a viable and profitable operation. Earnings for the first half of 2002 were the highest since American Ecology went public in 1984.

## Waste Report

This year's Waste Survey was included in the Commission's mailing of the 2002-2003 export applications. The survey was also made available to those generators using the Commission's web site.

Fourteen shippers responded to the survey. Respondents included 7 medical facilities, 4 higher education facilities, 2 utilities and 1 federal 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 a few days to many years.

- we hope that this isn't required
- 90 days from day container is full
- 25 years

The approximate costs associated with storing their waste has increased from last year with the highest cost being estimated at \$100,000.

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

A sampling of concerns

expressed by the Regional generators are as follows:

- increased cost, significant personnel exposure due to extra handling and monitoring while stored on site
- Cost - Class B & C Waste
- we would hope that ground burial would continue to be available helping us to achieve the philosophy that dilution is not a good means of disposal
- permit costs keep rising - having seen no tangible benefits from increased administrative (permit) fees
- where is the money sent to Nebraska for development of the llrw facility
- will we have a disposal site available to our company
- will there be a site available for future disposal
- costs for disposal of waste which includes export fees, site use permits, etc.

### Disposal Information

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

DOE's contract with MACTEC, Inc. expires on September 30, 2002. Contacts for purchasing FY2002 data from the commercial disposal facilities are expected to be finalized by the end of August with receipt of disposal data from September 2001 through July 2002 within 30 days of contract ratification.

The MIMS web site, maintained by MACTEC, Inc

may be accessed at: <http://mims.mactec.com>.

The information for calendar year 2001, in the chart below, was taken from the Radioactive Exchange, Vol 21 No. 2, January 31, 2002, page 8. The chart shows the total volume by cubic feet exported to the Barnwell facility for 2001 from the Central States Region.

As of June 30, 2002, the generators of the Region have shipped a total of 48,410 cubic feet of waste to the Barnwell facility with Arkansas shipping 47,600 cubic feet of the total.

No comprehensive information is currently available for those generators using Envirocare of Utah as their disposal facility option.

The Commission approved 25 export applications for this reporting period.

### Envirocare of Utah

In April 2001 Envirocare of Utah announced its decision not to seek legislative or gubernatorial approval for its Class B & C low-level radioactive waste proposal. Envirocare indicated that due to the proposal by the Goshute Tribe and Private Fuel Storage to accept high-level radioactive waste a public perception problem has developed that makes the licensing task extremely difficult.

On June 14, 2002 a lawsuit was filed against the sponsors of a Utah ballot initiative that would impose taxes on the disposal of out-of-state llrw and to prohibit the disposal of Class B & C radioactive waste within the state. The initiative calls for a time-of-deposit tax as well as a gross receipts tax on disposal facilities within the state. On August 26, 2002 the Utah Supreme Court issued a ruling that will place the initiative on Utah's November ballot.

<b>LLRW ACCEPTED FOR DISPOSAL AT BARNWELL</b>	
<b>States</b>	<b>Volume (ft3)</b>
Arkansas	2
Kansas	600
Louisiana	517
Nebraska	2,261
Oklahoma	7
<b>Calendar Year 2001 Total</b>	<b>3,386</b>

## Summary of Litigation

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

**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 lawt itself. Therefore, at least until trial of the federal case, now expected in 2002, there will be no further action in the contested case proceeding. The State appealed the preliminary injunction, but it was sustained by the U.S. Court of Appeals for the Eighth Circuit on April 12, 2000. The State did not then seek to take the issue to the U.S. Supreme Court.

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

In this case, which was filed by the major generators in late December, 1998, the claim was made by those original plaintiffs against the State of Nebraska, the directors of the Departments of Health and Human Services and Environmental Quality, and against the program director for the low-level radioactive waste program, Jay Ringenberg, and others, that the licensing proceeding was politically influenced and the denial was invalid. The plaintiffs also named the Central Interstate Low-Level Radioactive Waste Commission as a defendant, subject to realignment by the court since the Commission's position was

much more likely to be aligned with the plaintiffs than the defendants. The claims by the generators were that the State of Nebraska, under color of state law, had denied the civil rights of the plaintiff generators in various respects, and also that the plaintiff generators were essentially intended beneficiaries of the compact between the states, and that bad faith on the part of the State of Nebraska had caused them tremendous damages.

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

On April 16, 1999, United States District Judge Richard Kopf granted the preliminary injunction, making extensive findings of probable bad faith by Nebraska in a 38-page opinion. The requirements for preliminary injunctive relief include a finding of probable ultimate liability, and the Court therefore was obliged to make that call and found very substantial and itemized evidence of various bad faith and political influence on the licensing proceeding. The State appealed the preliminary injunction; the Commission and the State filed their briefs, oral argument was held, and on April 12, 2000 the United States Court of Appeals affirmed Judge Kopf's decision in its entirety. The defendants, including the State of Nebraska, also had filed a motion with Judge Kopf on similar arguments to dismiss the lawsuit, largely on the basis of Nebraska's claim of sovereign immunity against any such relief as the Court might grant. Judge Kopf overruled the motion, and this decision was also appealed to the Eighth Circuit. On March 8, 2001, the Court of Appeals affirmed as to the Commission (the Court remanded for further district court consideration some of the claims made by the other plaintiffs). After the Eighth Circuit denied Nebraska's request for rehearing. Nebraska filed a petition for certiorari, asking the U.S. Supreme Court to reverse the Court of Appeals. The Commission opposed the certiorari request. The Supreme Court refused to hear Nebraska's appeal.

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

possible spoliation of evidence.

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

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

The parties conducted extensive discovery throughout 2001 and early 2002.

Following a pretrial conference and the preparation of a detailed pretrial order, trial of the case commenced on June 3, 2002, and concluded on July 30, 2002. Approximately 30 witnesses testified and about 2000 exhibits (totally, somewhere around 100,000 pages in length) were received in evidence. At the close of the trial, the Court established a schedule for briefing and argument.

The initial briefs of all parties were filed on August 26, 2002. Reply briefs are due by September 6, 2002. The Court will hear one-half day of closing arguments on September 10, 2002. During the trial, Judge Kopf announced his intention to render a decision by October 1, 2002.

**Export Applications for FY02-03 can now be accessed through the Commission's Web Page @ [www.cillrwcc.org](http://www.cillrwcc.org)**

**The next meeting of the Commission is tentatively scheduled for January 22, 2003 and is to be in Kansas City, Kansas**

### **Information and Education**

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

Items contained on the Commission's web page are newsletter articles, Annual Reports, minutes of Commission meetings, notices of meetings, legal summaries and other appropriate information. The web site may be accessed at <http://www.cillrwcc.org>.

**STATUS OF COMMISSION FUNDS**  
as of June 30, 2002

**Rebate Funds**

Rebate funds can only be spent to:

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

Commission's "Guaranty Fund" rebate case settlement funds obligated (CIC Acct)	\$829,461 <sup>Principal</sup>
Commission's \$900K in Guaranty Fund is for the sole purpose of guaranteeing timely payment to the state for licensing costs billed to US Ecology.	\$ 70,539 <sup>Interest</sup>
	<u>\$900,000</u> <sup>Total</sup>

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

**Commission Cash Expenitures for Fiscal Year 2001-2002 and Budget for Fiscal Year 2002-2003**

Expense	FY99-00	FY00-01	FY01-02 Budget (1)	FY01-02 Actual	FY02-03 Budget
Salaries & Benefits	69,796	70,649	90,747	90,364	87,972
Rent	27,773	27,652	29,000	27,722	29,000
Telephone	5,328	4,721	6,000	4,009	6,000
Postage	1,189	1,215	1,500	608	1,500
Copy & Printing	130	40	500	101	500
Machine Lease & Maintenance	4,990	2,515	4,000	2,863	4,000
Meeting Transcriptions	1,826	1,163	4,000	1,160	4,000
Dues & Subscriptions	277	5,958	8,500	8,491	9,000
Office Equipment & Supplies	4,202	4,626	5,000	4,666	5,000
Travel & Meeting Expense	9,252	4,596	6,500	4,166	9,000
Insurance	3,982	3,340	3,500	3,042	3,500
Accounting	36,671	20,925	23,000	19,100	22,000
Legal Fees	277,550	430,073	1,216,150	1,157,622	344,000
Miscellaneous	0	34	500	4	500
Project Manager	22,800	0	0	0	0
Cash Reserve / Recover Shortfall					175,000
Butte Site Maintenance / USE	17,388	25,599	221,000	262,295.80	33,930
<b>Total</b>	<b>483,154</b>	<b>603,406</b>	<b>1,619,897</b>	<b>1,586,213</b>	<b>734,902</b>
(1) Amended June 4, 2002					

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

Financial Statements

June 30, 2002 and 2001

(With Independent Auditors' Report Thereon)

## Independent Auditors' Report

The Commissioners  
Central Interstate Low-Level  
Radioactive Waste Commission:

We have audited the accompanying balance sheets of the Central Interstate Low-Level Radioactive Waste Commission (Commission) as of June 30, 2002 and 2001, and the related statements of revenues, expenses, and retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Commission's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Central Interstate Low-Level Radioactive Waste Commission as of June 30, 2002 and 2001, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report, dated August 1, 2002, on our consideration of the Commission's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

August 1, 2002

**KPMG LLP**

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

Balance Sheets

June 30, 2002 and 2001

<b>Assets</b>	<b>2002</b>	<b>2001</b>
Current assets:		
Cash and cash equivalents	\$ 457,757	278,835
Restricted assets:		
Rebate fund	138,420	101,917
Guarantee fund	1,000,000	1,000,000
Project fund	13,456	13,456
Total restricted assets	1,151,876	1,115,373
Property and equipment	81,264	81,337
Less accumulated depreciation	76,095	75,841
Net property and equipment	5,169	5,496
Total assets	\$ 1,614,802	1,399,704
<b>Liabilities and Retained Earnings</b>		
Liabilities:		
Current liabilities:		
Accounts payable	\$ 369,294	184,046
Accrued expenses	9,478	7,428
Total current liabilities	378,772	191,474
Unearned export application fees	331,775	13,125
Total liabilities	710,547	204,599
Retained earnings	904,255	1,195,105
Total liabilities and retained earnings	\$ 1,614,802	1,399,704

See accompanying notes to financial statements.

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

Statements of Revenues, Expenses, and Retained Earnings

Years ended June 30, 2002 and 2001

	<u>2002</u>	<u>2001</u>
Revenues:		
Commission member fees	\$ 125,000	125,000
Export application fees	1,053,500	394,875
Other	126	1,162
Total revenues	<u>1,178,626</u>	<u>521,037</u>
Operating expenses:		
Salaries and benefits	93,489	73,409
Professional services	1,113,001	505,761
Office and administrative	21,394	19,522
Rent	27,723	27,652
Travel	4,166	4,597
Depreciation	2,750	3,452
US Ecology site maintenance	247,034	20,038
US Ecology consulting	15,265	13,017
Refund to major generators	—	300,000
Total operating expenses	<u>1,524,822</u>	<u>967,448</u>
Loss from operations	(346,196)	(446,411)
Interest income	<u>55,346</u>	<u>95,772</u>
Net loss	(290,850)	(350,639)
Retained earnings, beginning of year	<u>1,195,105</u>	<u>1,545,744</u>
Retained earnings, end of year	<u><u>\$ 904,255</u></u>	<u><u>1,195,105</u></u>

See accompanying notes to financial statements.

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

Statements of Cash Flows

Years ended June 30, 2002 and 2001

	<u>2002</u>	<u>2001</u>
Cash flows from operating activities:		
Net	\$ (346,196)	(446,411)
Adjustments to reconcile net loss to cash provided by (used in) operating activities:		
Depreciation	2,750	3,452
Changes in assets and liabilities:		
Current liabilities	187,298	161,205
Unearned export application fees	318,650	(334,000)
Total adjustments	<u>508,698</u>	<u>(169,343)</u>
Net cash provided by (used in) operating activities	<u>162,502</u>	<u>(615,754)</u>
Cash flows from investing activities:		
Interest received	55,346	95,772
Sales (purchases) of certificates of deposit	(36,503)	339,074
Net purchases of property and equipment	<u>(2,423)</u>	<u>(2,908)</u>
Net cash provided by investing activities	<u>16,420</u>	<u>431,938</u>
Net increase (decrease) in cash and cash equivalents	178,922	(183,816)
Cash and cash equivalents at beginning of year	<u>292,291</u>	<u>476,107</u>
Cash and cash equivalents at end of year	<u>\$ 471,213</u>	<u>292,291</u>
Reconciliation to balance sheets:		
Cash and cash equivalents	\$ 457,757	278,835
Project fund	<u>13,456</u>	<u>13,456</u>
Total cash and cash equivalents at end of year	<u>\$ 471,213</u>	<u>292,291</u>

See accompanying notes to financial statements.

## Notes to Financial Statements

June 30, 2002 and 2001

### (1) Organization

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

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

### (2) Summary of Significant Accounting Policies

#### (a) *Basis of Accounting*

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

The Commission applies all applicable Financial Accounting Standards Board Statements and Interpretations, Accounting Principles Board Opinions, and Accounting Research Bulletins except for those that conflict with or contradict Government Accounting Standards Board (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. Construction and development of the project is currently on hold. The Commission did not receive funding from the major generators for the years ended June 30, 2002 and 2001.

##### **Commission Member Fees**

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

##### **Export Application Fees**

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

#### (c) *Property and Equipment*

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

**(d) *Restricted Assets***

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

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

The Commission 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. Commission management believes that presently no circumstances exist to necessitate the use of monies in the guarantee fund for payment of licensing costs incurred by the State of Nebraska. At the end of the prelicensing period, when the license decision is final, the guaranty provisions expire. When that date approaches and any remaining anticipated costs of the licensing activities are determined and paid, the \$100,000 deposited in the guarantee fund shall be released to the major generators. The remaining \$900,000 may then be used by the Commission for any legal purpose.

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

**(e) *Use of Estimates***

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

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

At June 30, 2002, the Commission had \$1,609,633 invested in short-term federal investment trust accounts in the rebate and guarantee funds backed by the full faith of the federal government. At June 30, 2001 the Commission had cash and certificates of deposit of \$1,394,208. This amount included administrative, community improvement and project funding accounts of \$3,024 covered by FDIC deposit insurance and \$289,267 invested in short-term federal investment trust accounts backed by the full faith of the federal government. The balance at June 30, 2001 consisted of rebate fund certificates of deposit, \$100,000 covered by FDIC deposit insurance and \$1,001,917 collateralized by government securities/agencies held in joint custody at the federal reserve, by the pledging bank, in the Commission's name.

**(4) Contractual Agreements**

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

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

**(5) Contingencies**

In December 1998, the State of Nebraska denied US Ecology's license to build and operate the facility. In June 1999, Nebraska passed a law which would withdraw Nebraska from the Commission effective in August 1999. Nebraska would remain a member for up to five years after its notice to withdraw was submitted to the Commission. The Commission has joined in a lawsuit with the major generators and US Ecology against the State of Nebraska for licensing of the site or damages, or both, for a bad-faith denial by Nebraska. The case was tried commencing June 30, 2002, and ended July 31, 2002. The court has set a schedule for post-trial briefs and oral argument and has indicated its intention to render a decision by the end of September 2002. If the Commission is successful, relief may take the form of money damages, or an equitable remedy in the nature of a new, unbiased licensing process, or some combination of the two. The major generators and US Ecology have filed crossclaims against the Commission for equitable subrogation or reimbursement in the event the Commission receives monetary judgment. Except for the costs of prosecuting the case, the Commission has no net claims for liability against it.

**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, 2002 and have issued our report thereon dated August 1, 2002. 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.

August 1, 2002

**KPMG LLP**

