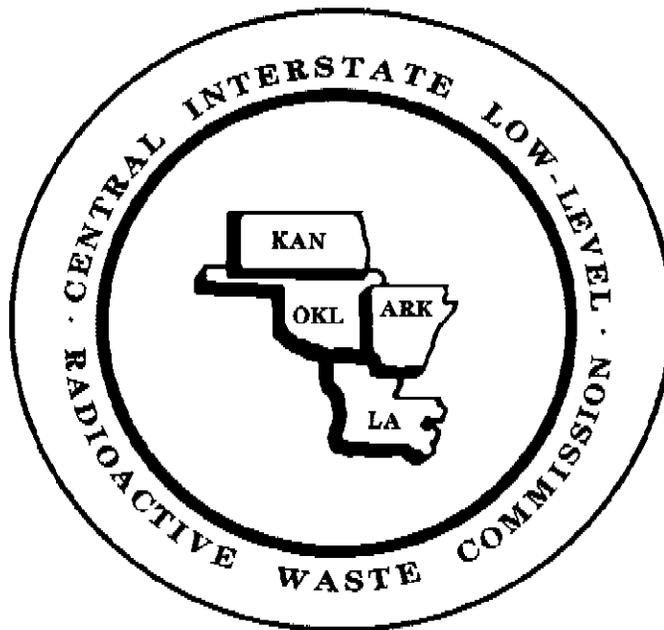


# Central Interstate Low-Level Radioactive Waste Commission



**Annual Report  
2006-2007**



**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 four-state Compact region;

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

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

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

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

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 Radioactive Waste Compact  
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## Commissioners

### Arkansas

Laura Gilson  
Attorney

#### Alternate

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Radiation Control Division  
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### Kansas

Joseph Harkins  
Director  
Kansas Energy Office  
Corporation Commission

#### Alternate

Ron Hammerschmidt  
Director  
Division of Environment  
Kansas Depart Health &  
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### Louisiana

Thomas Bickham  
Underscretary  
Depart of Environmental Quality

### Oklahoma

Catherine Sharp  
Waste Management Division  
Depart of Environmental Quality

### Nebraska (until July 17,2004)

F. Gregory Hayden, Ph.D.  
Professor of Economics  
University of Nebraska - Lincoln

#### Alternate

Craig Zeisler  
Farmer-Rancher

## Commission Staff

Administrator: Rita Houskie

Secretary: Terry Davis

## Commission Consultants

Financial: Richard Kuzelka

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Developer (until 2006): US Ecology

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## Project Background

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

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

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

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

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

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

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

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

In October 1997 the State released their Draft Safety Evaluation Report and the Draft Environmental Impact Analysis. Of the 152 evaluation areas, the reviewers found US Ecology's

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

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

The interested public and the Commission's developer participated in the public comment period and the public hearing. US Ecology said the state's finding of 29 unacceptable areas provided

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

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

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

After the issuance of the denial decision, three major waste generators of the Region filed a lawsuit against the State, its agents and the Commission, claiming injury due to the 'bad

faith' review by the State's regulators.

At the Commission's Mid-Year meeting, held in January 1999, various actions were taken in response to the denial decision by Nebraska regulators. Those actions included the initiation of cost-cutting measures and instruction to Commission's legal counsel and US Ecology to request a contested case hearing challenging the licensing decision. US Ecology filed petitions with the regulatory agencies and the Commission filed to intervene in the requested contested case hearings. Also in January 1999 the Commission realigned itself as a plaintiff in the 'bad faith' claims made by the major generators against the State.

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

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

In May 1999 Nebraska's legislature passed LB 530. The governor signed the Bill withdrawing Nebraska from the Central Interstate Compact effective August 27, 1999.

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

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

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

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

The major generators' civil rights claims were barred by sovereign immunity by the Court but were allowed to remain in the litigation as a third party complaint against the Commission.

The trial began June 3, 2002 and continued for approximately eight weeks. The Commission received a favorable decision in the 'bad faith' lawsuit on September 30, 2002 and was awarded the sum of \$151,408,240.37 plus post-judgment interest. It did not, however, grant Commission's request of an appointment of a special master for an independent review of the license application.

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

and the State of Nebraska of the Commission's intent to seek by petition revocation of that portion of the Nebraska's Agreement State Status. The resolution also advised that no formal procedure to revoke be initiated until after the completion of the Federal litigation.

The Commissioners reconvened the Rule 23 Proceeding that began in 1999 upon receipt of Nebraska's decision to withdraw from the Compact at the January 2003 meeting. Nebraska was given a 60-day period to submit evidence of 'good faith' that the Commissioners formally received at the April 10, 2003 meeting. Deliberation took place in open session at the June 25, 2003, Annual Meeting. The Commission listed 13 particulars and voted 4-1 to revoke Nebraska's membership and to impose sanctions with an effective date of one year from notification. The State received official notification on July 17, 2003 and on August 22, 2003, Nebraska filed a complaint in U.S. District Court contesting the Commission's actions.

In October 2002, the State of Nebraska appealed the Court's decision on the 'bad-faith' litigation. The Eighth Circuit Court of Appeals heard oral arguments in June 2003 and affirmed the lower court decision in February 2004. Nebraska filed a petition for rehearing en banc in March and on April 22, 2004 the Eighth Circuit Court of

Appeals denied the state's petition. On July 16, 2004, Nebraska filed a Petition for Writ of Certiorari with the U. S. Supreme Court.

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

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

The Commissioners declined the proposed settlement offer made by the state at its June 8, 2004 meeting and indicated a counter-proposal would be forth coming. The Commission held two additional meetings to consider the terms of agreement and accepted (3-1 vote with Kansas voting no) the revised offer at the August 9, 2004 meeting with Nebraska agreeing to pay the

Commission \$140.5 million in principal over a 4 year period. The agreement also stipulated that all pending litigation and claims would be ended amicably, and for a period of nine months a cooperative effort would be made to access disposal outside the region for waste generated within the compact boundaries.

At the Commission's January 12, 2005 meeting, the Commissioners formed three committees for the purpose of looking at options for the holding and/or investing of some or all of the settlement funds; to review claims against the funds; and the continuing negotiations for disposal access.

At a two-day meeting in July 2005, the Commission held discussion on the future role and alternatives of the compact. Resolutions were adopted that ceased siting activity, suspended talks with Texas, the monitoring of generators' needs, the distribution of all but \$15 million of the settlement funds and the disposition of the land in Boyd County.

The Executive Consultant reported at the February, 2006 meeting that the nation's disposal availability for Class A waste was sufficient for the foreseeable future, however disposal options for Class B & C waste would end in 2008 with the closing of the Barnwell facility.

The Consultant recommended that the Commission remain intact and offered a Revised Operating Plan of which the Commission adopted as a guidance document.

Instructions were given to offer the Boyd County land to the Village of Butte, that was completed in April 2006, and to distribute an additional \$10 million to the major generators.

Instructions were given to Legal Counsel, in May 2006, to defend against the litigation brought by the major generators regarding the remaining \$5 million still in the Commission's possession.

### Project Status Update

In January 2007, the Courts ruled for the Commission in the litigation over the \$5 million still in the Commission's possession.

### Significant Events Recap

#### Commission Meetings

- Special Telephone Meeting July 20, 2006

A special meeting via telephone was called to take action on two federal export application, seven non-federal export applications and four utility export

applications. All submitted applications to export llrw were approved for fiscal year 2006-2007.

- Special Telephone Meeting September 26, 2006

The Commission came together in a special telephone meeting that had been called to take action on export applications and to receive legal advice from Outside Legal Counsel. The commissioners entered into executive session and received advise regarding the ongoing litigation brought by the major generators regarding the Commission's retention of \$5 million of the settlement funds.

Three non-federal export applications for fiscal year 2006-2007 were approved by the Commission. One non-federal export application from fiscal year 2005-2006 was also approved by the Commission.

- Special Telephone Meeting January 25, 2007

At the telephone meeting, held January 25, 2007, the Commission approved minutes from the July and September, 2006, meetings. They also took action on one federal export application and two non-federal export applications.

The budget that was approved at the annual meeting in June 2006

was adjusted to include increased export revenues and the increase to the legal line item to pay legal counsel. It was also noted that additional administrative reserves would be used for this purpose.

The audit for fiscal year 2005-2006 was accepted, however there was discussion on one of the auditor's comments regarding the lack of segregation of duties or other mitigating controls over disbursements under \$5,000. The Chair agreed to ask the auditor for suggestions since having only one employee could be an issue relating to the segregation of duties. Controls remain in place for over \$5,000 expenditures.

- Special Telephone Meeting March 30, 2007

Approval was given on three non-federal export applications by the Commission at the March 20, 2007 meeting.

A second adjustment to the annual budget adopted at the June 2006 meeting was made to the legal line item to pay additional legal expense.

The Chair reported on the fiscal year 2005-2006 auditor's comment that the Kansas Commissioner had questioned at the January 2005 meeting. She indicated that one idea had surfaced to use the

Financial Consultant or possibly a commissioner to act as a second set of eyes for those expenditures under \$5,000 and that the issue would be on the agenda of the next meeting.

- Annual Meeting June 20, 2007

The Annual Meeting of the Central Interstate LLRW Commission was held in Oklahoma City, Oklahoma. The Commissioners came together to take action on routine administrative business.

The Administrator reported on the revised application submitted by Waste Control Specialist to the Texas Commission on Environmental Quality. The review of the application is expected to be completed in October, 2007. She also reported that the South Carolina Legislation to keep the Barnwell facility open past 2008 was defeated.

Outside Legal Counsel reported to the Commission that the litigation over the retention of the \$5 million of the settlement funds brought by the Major Generators was resolved in January 2007 when the Courts ruled in the Commission's favor.

The minutes from the January and March, 2007, telephone meetings were approved by the Commission as written.

The Chair reported that a process had been developed to satisfy KPMG's comments from the 2005-2006 audit of the Commission regarding controls over disbursements under \$5,000. The Financial Consultant had agreed to be the Commission's 'second set of eyes'.

The Commission voted to renew the Financial Consultants contract for fiscal year 2007-2008. They also approved two federal applications to export low-level radioactive waste from the region and six non-federal applications to export.

The Administrator and Legal Counsel answered the Commissioners' questions regarding the transition plan for moving the executive office to a home office, the retention and archival of the numerous files belonging to the Commission and Legal Counsel, and the disposition of the Commission's surplus furnishings. The Commissioners voted to give the Chair authority to sell the Commission's furnishings at her discretion.

Budgetary questions and comments were also a part of the discussion regarding the transition to a smaller operation.

A discussion was held on the continued use of KPMG, LLP as the Commission's auditor. It was noted that the cost continues to climb even though the

Commission has downsized its operations. Comments were made that due to the Commission's history and unique business model and KPMG's longevity with the Commission it might be worth the price for the consistency.

The Oklahoma Commissioner was voted in to serve as Chair for fiscal year 2007-2008.

## Waste Report

This year's Waste Survey was included in the Commission's emailing of the 2006-2007 export applications. The survey was also made available to those generators using the Commission's web site. Twenty (20) shippers responded to the survey. Respondents included 7 medical facilities, 6 higher education facilities, 1 utility, 2 industrial facilities and 4 research/other facilities.

The two commercial disposal facilities available to accept Class A, B, and C low-level radioactive waste were the Barnwell, South Carolina, disposal facility and Energy Solutions in Clive, Utah.

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

Annual costs for low-level radioactive waste management that includes minimization technology and on-site storage were reported as low as \$150 per year to as high as \$1,000,000 per year.

One respondent indicated recent capital costs incurred for the management of LLRW and additional storage space is planned for one utility.

Two higher education facilities and one other category facility indicated that modifications to operations have been made. Two stated that projects have been refused or reduced due to LLRW disposal issues and the other indicates that a 'less burdensome non-rad labeling techniques' is being used'.

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

- Availability – Class B & C Waste disposal options
- Any restriction and limitation that would require storage, additional costs, and the promotion of dilute and disperse over concentration and contain; the latter is a more suitable method of disposal. The former falls short of an ideal waste disposal option
- The high cost of disposal of carbon-14 and tritium wastes. Where and when will disposal of llrw within the

Compact be available and at what cost?

- Access to disposal sites at a reasonable cost.

GAO raised concerns (GAO-04-604) regarding the usefulness and reliability of the MIMS data in 2004. Inaccuracies were identified and resolved in December 2004.

The Commission approved 31 export applications for this reporting period: 7 from Arkansas, 8 from Kansas, 13 from Louisiana, and 3 from Oklahoma

The generators used both Barnwell, S.C. facility and the *EnergySolutions* facility in Clive, Utah during this reporting period.

Disposal Information

The Manifest Information Management System (MIMS) is a database, developed in 1986 by DOE to be used to monitor the management of commercial low-level radioactive waste. (<http://mims.apps.em.doe.gov>)

Disposal Site	Year Received	Generator Class	Total Volume (ft3)	Total Activity (curies)	Class A Volume (ft3)	Class A Activity (curies)	Class B Volume (ft3)	Class B Activity (curies)	Class C Volume (ft3)	Class C Activity (curies)	Brokered Volume (ft3)
Barnwell	2006	Academic	2.51	2.03	0.00	0.00	0.00	0.00	2.51	2.03	0.00
Barnwell	2006	Industry	11.50	241.75	0.00	0.00	0.00	0.00	11.50	241.75	0.00
Barnwell	2006	Utility	145.86	254.84	0.00	0.00	12.10	8.31	133.76	246.52	0.00
Barnwell	2007	Government	0.83	0.63	0.00	0.00	0.00	0.00	0.83	0.63	0.00
Barnwell	2007	Utility	302.86	2,158.78	92.91	38.22	36.86	320.53	173.09	1,800.03	0.00
Clive	2006	Industry	8,382.88	6.09	8,382.88	6.09					0.00
Clive	2006	Unde-	105.67	17.48	105.67	17.48					0.00
Clive	2007	Industry	17,208.27	6.45	17,208.27	6.45					0.00
Clive	2007	Unde-	170.06	45.27	170.06	45.27					0.00
Clive	2007	Utility	1,900.00	0.04	1,900.00	0.04					0.00
<b>Total:</b>			<b>28,230.43</b>	<b>2,733.34</b>	<b>27,859.78</b>	<b>113.54</b>	<b>48.96</b>	<b>328.84</b>	<b>321.69</b>	<b>2,290.96</b>	<b>0.00</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.cillrwcc.org](http://www.cillrwcc.org)) for details of past litigation.

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

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

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

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

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

While the State's certiorari petition was pending, Nebraska and the CIC entered settlement negotiations. Following those lengthy negotiations, the State of Nebraska and the Commission entered into a

settlement which resolved all of the various disputes remaining between them. The terms of the settlement are discussed in more detail later.

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

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

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

**CIC AND NEBRASKA SETTLE THEIR REMAINING DISPUTES**

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

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

The settlement agreement further provides that Nebraska and CIC agree to cooperate for a period of at least nine months in an effort to find a disposal capacity for waste generated within the CIC region and Nebraska. Nebraska has agreed to dismiss all remaining litigation, including withdrawing its cert petition in the "bad faith" litigation. Upon Nebraska making all payments required by the agreement, CIC agrees to release Nebraska from all obligations under the Compact, including the obligation to be the region's first host state. If Nebraska's Legislature fails to appropriate the money for the agreed payments or if for

any other reason Nebraska does not make the payments on time, then the Commission would have various available collection remedies as stated in the agreement, and Nebraska would again be subject to its host state obligation.

**ENERGY ARKANSAS, INC., ET AL. V. CENTRAL INTERSTATE  
LOW-LEVEL RADIOACTIVE WASTE COMMISSION  
United States District Court for the District of Nebraska  
(Case No. 4:06-cv-3101)**

On April 25, 2006, the major generators sued the Commission, contending that they were entitled to the \$5 million the Commission had retained from the settlement proceeds for its own use. The Commission filed an answer denying the generators' allegations. The parties mediated the dispute, but the mediation was not successful.

On November 29, 2006, the major generators and the Commission filed cross motions for summary judgment. The parties submitted documentary evidence and briefs supporting their positions.

On January 11, 2007, the district court issued a memorandum and order granting the Commission's motion for summary judgment and dismissing the major generators' suit. Judge Kopf ruled that the major generators were not entitled to the imposition of either a constructive or resulting trust on the \$5 million retained by the Commission from the settlement proceeds. Judge Kopf rejected the major generators' contentions that the Commission had behaved inequitably toward the major generators, and that the Commission had no real need to retain substantial funds from its settlement with Nebraska. The major generators chose not to appeal the decision, and it is final.

Export Applications for FY06-07 can be accessed through the  
Commission's Web Page @ [www.cillrwcc.org](http://www.cillrwcc.org)

**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 and materials are on the Commission's web page and distributed to interested persons and groups through email. The Commission's office responds to various requests for information.

Items contained on the Commission's web page are news 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, 2006

**Rebate Funds**

**\$829,461** Principal

Rebate funds can only be spent to:

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

**Settlement Funds**

**\$5,000,000.00**

Effective August 1, 2004, Nebraska and the CIC entered into a comprehensive settlement agreement. Nebraska paid the Commission \$145,811,366.17 on August 1, 2005. All but \$5,000,000 was paid on claims the Commission received from major generators, member states and the developer.

**Commission Cash Expenitures for Fiscal Year 2006-2007 and Budget for Fiscal Year 2007-2008**

Expense	FY04-05	FY05-06	FY06-07 Budget	FY06-07 Actual	FY07-08
Salaries & Benefits	73,405	74,159	82,250	74,661	83,406
Rent	28,464	18,550	16,000	15,192	11,000
Telephone	4,707	3,791	4,500	3,406	4,000
Postage	701	83	750	296	750
Copy & Printing	374	0	1000	77	750
Machine Lease & Maintenance	1,583	1,647	2,000	993	1,500
Meeting Transcriptions	2,716	2,585	2,000	578	1,500
Dues & Subscriptions	8,787	8,762	9,000	8,915	10,000
Office Equipment & Supplies	2,164	2,020	5,000	2,373	5,000
Travel & Meeting Expense	14,060	11,997	10,000	7,323	10,000
Insurance	3,833	3,945	4,000	3,291	4,000
Accounting	24,400	22,000	16,600	16,500	19,100
Legal Fees	197,906	54,498	90,000	79,998	8,000
Miscellaneous	137	0	500	34	500
Cash Reserve / Recover Shortfall	0	0	0	0	0
Butte Site/USE/Exec Consult(05-06)	57,404	20,739	0	0	0
<b>Total</b>	<b>420,441</b>	<b>224,775</b>	<b>243,600</b>	<b>206,314</b>	<b>159,506</b>



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

Financial Statements

June 30, 2007

(With Independent Auditors' Reports Thereon)



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Lincoln, NE 68508-2041

## **Independent Auditors' Report**

The Commissioners  
Central Interstate Low-Level  
Radioactive Waste Commission:

We have audited the accompanying statement of net assets of the Central Interstate Low-Level Radioactive Waste Commission (the Commission) as of June 30, 2007, and the related statement of revenues, expenses, and changes in net assets and cash flows for the year 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 audit.

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. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, 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, 2007, and changes in its net assets and its cash flows for the year then ended in conformity with U.S. generally accepted accounting principles.

In accordance with *Government Auditing Standards*, we also have issued our report dated September 5, 2007 on our consideration of the Commission's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, grants, agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

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

KPMG LLP

Omaha, Nebraska  
September 5, 2007

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

Statement of Net Assets

June 30, 2007

**Assets**

Current assets:	
Cash and cash equivalents	\$ 6,164,776
Restricted assets:	
Rebate fund	1,041,223
Capital assets	82,036
Less accumulated depreciation	<u>80,380</u>
Total capital assets, net	<u>1,656</u>
Total assets	<u><u>\$ 7,207,655</u></u>

**Liabilities and Net Assets**

Current liabilities:	
Accounts payable	\$ 9,404
Accrued expenses	<u>13,637</u>
Total liabilities	<u>23,041</u>
Net assets:	
Invested in capital assets	1,656
Restricted	1,041,223
Unrestricted	<u>6,141,735</u>
Total net assets	<u>7,184,614</u>
Total liabilities and net assets	<u><u>\$ 7,207,655</u></u>

See accompanying notes to financial statements.

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

Statement of Revenues, Expenses, and Changes in Net Assets

Year ended June 30, 2007

Operating revenues:	
Commission member fees	\$ 20,000
Export application fees	21,975
Total operating revenues	41,975
Operating expenses:	
Salaries and benefits	74,661
Professional services	97,076
Office and administrative	18,697
Rent	15,191
Travel	7,323
Depreciation	1,133
Total operating expenses	214,081
Total operating loss	(172,106)
Nonoperating revenues (expenses):	
Interest income	325,549
Distribution of litigation settlement	—
Total nonoperating revenues (expenses)	325,549
Change in net assets	153,443
Net assets:	
Beginning of the year	7,031,171
End of the year	\$ 7,184,614

See accompanying notes to financial statements.

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

Statement of Cash Flows  
Year ended June 30, 2007

Cash flows from operating activities:		\$	
Receipts from customers			41,975
Payments to employees			(74,661)
Payments for professional services			(97,076)
Other payments			(41,150)
			<u>(170,912)</u>
Net cash used in operating activities			<u>(170,912)</u>
Cash flows from capital and related financing activities:			
Purchases of capital assets			(497)
			<u>(497)</u>
Net cash used in capital and related financing activities			<u>(497)</u>
Cash flows from investing activities:			
Interest received			325,549
Receipts from the State of Nebraska			—
Distribution of litigation fund			—
Net purchases of investments			(45,968)
			<u>279,581</u>
Net cash provided by investing activities			<u>279,581</u>
Net decrease in cash and cash equivalents			108,172
Cash and cash equivalents at beginning of year			<u>6,056,604</u>
Cash and cash equivalents at end of year		\$	<u><u>6,164,776</u></u>
Reconciliation of operating income to net cash used in operating activities:			
Total operating loss		\$	(172,106)
Adjustments to reconcile operating loss to net cash used in operating activities:			
Depreciation expense			1,133
Changes in assets and liabilities:			
Accounts payable			784
Accrued expenses			(723)
			<u>(170,912)</u>
Net cash used in operating activities		\$	<u><u>(170,912)</u></u>

See accompanying notes to financial statements.

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

Notes to Financial Statements

June 30, 2007

**(1) Organization**

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

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

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

**(a) Basis of Accounting**

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

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

**(b) Revenue Recognition**

**Funding from Major Generators**

The major generators previously provided funding for the siting, licensing, development, and construction of the facility. Revenues are recognized as earned, and expenses are recognized as incurred. The Commission did not receive funding from the major generators for the year ended June 30, 2007.

**Commission Member Fees**

Commission members pay a \$5,000 annual membership fee.

**Export Application Fees**

Fees for approval to export waste are recorded as revenue when earned. This fee is used to cover the Commission's operating expenses.

**(c) Property and Equipment**

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

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

Notes to Financial Statements

June 30, 2007

**(d) Restricted Assets**

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

The composition of restricted assets in the rebate fund at June 30, 2007 is set forth in the following table. Investments are stated at fair value.

Certificates of deposit	\$ 600,000
Federal investment trust accounts	441,223
Total restricted assets in the rebate fund	<u>\$ 1,041,223</u>

**(e) Cash and Cash Equivalents**

For purposes of the statements of cash flows, the Commission considers investments with a maturity of three months or less when purchased to be cash equivalents. At June 30, 2007, the Commission had \$6,164,776 invested in cash and short-term federal investment trust accounts backed by the full faith of the federal government.

**(f) Use of Estimates**

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

**(g) Reclassifications**

The settlement proceeds fund has been reclassified to cash and cash equivalents because there are no restrictions on these funds.

**(3) Investments**

The Commission maintains investments in federal investment trust accounts totaling \$6,580,762 at June 30, 2007.

**(a) Interest Rate Risk**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The Commission does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates. The federal investment trust accounts are redeemable upon demand and therefore, are not susceptible to interest rate risk. The certificates of deposit mature in less than two years.

(Continued)

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

Notes to Financial Statements

June 30, 2007

**(b) Credit Risk**

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. GASB Statement No. 40, "Deposit and Investment Risk Disclosures," requires that disclosure be made as to the credit rating of all fixed income securities except obligations of the U.S. government or obligations explicitly guaranteed by the U.S. government. The Commission has no investment policy that would further limit its investment choices. All of the Commission's investments as of June 30, 2007 are obligations of the U.S. government or obligations explicitly guaranteed by the U.S. government.

**(c) Concentration of Credit Risk**

The Commission places no limit on the amount that may be invested in any one issuer.

**(d) Custodial Credit Risk**

The Commission's investments are exposed to custodial credit risk if the securities are uninsured, not registered in the name of the Commission and are held by either: the counterparty, the counterparty's trust department, or agent not in the Commission's name. The custodial credit risk is that, in the event of the failure of the counterparty to a transaction, the Commission will not be able to recover the sale of the investment or collateral securities that are in the possession of the counterparty. As of June 30, 2007, the Commission's investments are uninsured, and held by the counterparty in the Commission's name.

**(4) Capital Assets**

Capital asset activity for the year ended June 30, 2007 is shown below:

	<b>Balance at beginning of period</b>	<b>Increases</b>	<b>Decreases</b>	<b>Balance at end of period</b>
Equipment	\$ 40,726	497	—	41,223
Furniture and fixtures	40,813	—	—	40,813
Accumulated depreciation	(79,247)	(1,133)	—	(80,380)
	<u>\$ 2,292</u>	<u>(636)</u>	<u>—</u>	<u>1,656</u>

**(5) Legal Proceedings**

In December 1998, the State of Nebraska denied U.S. Ecology's license to build and operate the facility. In June 1999, Nebraska passed a law that would withdraw Nebraska from the Commission effective in August 1999. Nebraska would remain a member for up to five years after its notice to withdraw was submitted to the Commission. The Commission joined in a lawsuit with the major generators and U.S. Ecology against the State of Nebraska for licensing of the site or damages, or both, for a bad-faith denial by Nebraska. The case was tried commencing June 3, 2002 and ended July 31, 2002.

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

Notes to Financial Statements

June 30, 2007

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

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

The Major Generators took the position that the Commission was legally obligated to reimburse them from the settlement proceeds the portion of the settlement attributable to the money paid to the Commission for the Nebraska project, plus interest. In addition, the Commission determined that certain other parties involved with the Compact were obligated to receive a portion of the settlement proceeds. Therefore, the Commission resolved that \$130,773,514 of the settlement proceeds received on August 1, 2005 would be distributed to the Major Generators, the States of Arkansas, Kansas, Louisiana, and Oklahoma for community improvement funds, and the U.S. Ecology. As a result, the Commission recorded a litigation settlement liability and recognized a nonoperating loss at June 30, 2005 of \$130,773,514. The Commission resolved to retain the remaining \$15,000,000 of the settlement proceeds with no final decision regarding retention of the money or if the Commission had a legal obligation to distribute it. Since the future obligation of the \$15,000,000 was not known, a corresponding liability was not recorded at June 30, 2005.

During 2006, the Commission agreed to distribute \$10,000,000 of the remaining \$15,000,000 of the settlement proceeds to claims made against it by the major generators. As a result, the Commission recorded a nonoperating loss at June 30, 2006 of \$10,000,000. The Commission resolved during 2006 to retain the remaining \$5,000,000 of the settlement proceeds. However, on April 25, 2006, the major generators filed a lawsuit against the Commission to force the Commission to distribute the remaining \$5,000,000 of settlement proceeds. On January 11, 2007, the lawsuit was dismissed pursuant to the Commission's motion for summary judgment. The major generators have not appealed.

(Continued)

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

Notes to Financial Statements

June 30, 2007

**(6) Commitments**

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

Fiscal year ending:		
2008	\$	6,071

Total rent expense charged to operations was \$15,191 for the year ended June 30, 2007.



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

The Commissioners  
Central Interstate Low-Level  
Radioactive Waste Commission:

We have audited the financial statements of Central Interstate Low-Level Radioactive Waste Commission (the Commission) as of and for the year ended June 30, 2007, and have issued our report thereon dated September 5, 2007. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Internal Control over Financial Reporting**

In planning and performing our audit, we considered the Commission's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing an opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Commission's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or a combination of control deficiencies that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

### **Compliance and Other Matters**

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

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

**KPMG LLP**

Omaha, Nebraska  
September 5, 2007