

Approved: April 29, 2005 *Carl Dean Holmes*  
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:08 a.m. on January 28, 2005 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter - Excused  
Representative Melody Miller - Excused

Committee staff present: Mary Galligan, Legislative Research  
Dennis Hodgins, Legislative Research  
Mary Torrence, Revisor of Statutes  
Jo Cook, Administrative Assistant

Conferees appearing before the committee:  
Mary Galligan, Kansas Legislative Research Department, Topeka, KS  
Ron Hammerschmidt, Kansas Dept. of Health & Environment, Topeka, KS

Others attending: See Attached List

Chairman Holmes welcomed Mary Galligan, Assistant Director - Information Management for the Kansas Legislative Research Department (KLRD), to address the committee on Low-Level Radioactive Waste Disposal. Ms. Galligan distributed copies of KLRD's documentation on low-level radioactive waste disposal from the Kansas Legislator Briefing Book 2005 (Attachment 1). She outlined the history of the Central Interstate Low-Level Radioactive Waste Compact and its current status.

Ron Hammerschmidt, Director, Division of Environment for the Kansas Department of Health and Environment, appeared before the committee in the capacity of Alternate Commissioner for Kansas to the Central Interstate Low-Level radioactive Waste Commission (Attachment 2). Dr. Hammerschmidt included in his testimony the most recent annual report from the Commission and provided an update on the Commission's recent activities. Dr. Hammerschmidt responded to questions from the committee.

The meeting adjourned at 9:59 a.m.

The next meeting is Tuesday, February 1, 2005 at 9:00 a.m.

# HOUSE UTILITIES COMMITTEE GUEST LIST

HAPPY BIRTHDAY KANSAS

DATE: January 28, 2005

NAME	REPRESENTING
DAVE HOLTHAUS	KEC
Mark Schreiber	Westar Energy
Sandra Braden	Great Plains/KCP
Shari Alsbuch	KDHE
Ron Hammerschmidt	KDHE
REX BUCHANAN	KS. GEOLOGICAL SURVEY



**Agriculture and  
Natural Resources**

**B-1  
Low-Level Radioactive  
Waste Disposal**

**Other Agriculture and  
Natural Resources  
reports available:**

**B-2  
The Kansas Animal  
Health Department  
and Foreign Animal  
Diseases**

**B-3  
Water Litigation**

**B-4  
State Water Plan Fund**

**Mary Galligan,  
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**Kansas Legislator  
Briefing Book  
2005**

**Agriculture and Natural Resources**

**B-1 Low-Level Radioactive Waste Disposal**

Abstract: Low-level radioactive waste generated in Kansas is currently disposed of at two out-of-state commercial disposal facilities. One facility is in South Carolina, the other is in Utah. Plans to develop a disposal facility in Nebraska to serve Kansas and four other Midwestern states ended in 1999 after Nebraska denied the license for the proposed facility and announced its intent to withdraw from the Central Interstate Low-Level Radioactive Waste Compact in 2004. More recently, a Federal Court of Appeals found that Nebraska did not operate in good faith in carrying out its obligations under the Compact. The settlement agreement reached in that and other related cases commits Nebraska and the Central Interstate Low-Level Radioactive Waste Commission to seeking access to a disposal site outside Nebraska.

**Low-Level Radioactive Waste Generation and Disposal**

Low-level radioactive waste is a byproduct of a variety of industrial, medical, governmental, academic, and nuclear power generation processes. The waste may take the form of rags, paper, protective clothing, machinery parts, medical treatment materials, or any other matter exposed to radioactive isotopes. Levels of radioactivity in these items can range from slightly above those found in nature to much higher levels, such as those found in parts from inside the reactor vessel of a nuclear power plant. In 2000, low-level waste disposal facilities received about 3.3 million cubic feet of commercially generated radioactive waste. Of this, 8.2 percent came from nuclear reactors, 83.8 percent from industrial users, 7.6 percent from government sources (other than nuclear weapons sites), 0.2 percent from academic users, and the rest was undefined.

Storage and disposal of low-level waste is regulated by the federal government and 33 states, including Kansas, where waste is generated and those where commercial disposal facilities are located.

The Nuclear Regulatory Commission oversees Agreement State programs through a formal evaluation process. In January 2004, subsequent to its most recent review, the Commission expressed concern that the current level of staffing in Kansas for the program may not be adequate for the number of licensees in the state.

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ATTACHMENT |

States that have assumed regulatory responsibilities from the Nuclear Regulatory Commission are termed Agreement States whose regulations must be compatible with Commission regulations. Kansas became an Agreement State in 1965.

The Kansas Department of Health and Environment carries out the state's responsibilities for licensing entities that use radioactive materials. Currently, over 300 such users are licensed in Kansas, but not all of them generate radioactive waste. According to the Department, approximately one-third of licensees use radiation in such a way that no waste is produced. In some of those instances, the radioactive material is returned to the original manufacturer after the Kansas licensee has finished working with it. The contamination in some other licensees' waste has a sufficiently short half-life<sup>1</sup> that the waste can be disposed of locally after a period of storage.

The Department of Health and Environment's regulations regarding radioactive materials, including low-level radioactive waste, can be found at K.A.R. 28-35-133 through 28-35-363.

Low-level waste is typically stored on-site by generators, either until it has decayed sufficiently to be disposed of as ordinary trash, or until the amount of waste accumulated is large enough for shipment to a low-level waste disposal site. Storage of low-level radioactive waste requires a state or federal license. The waste must be stored in a manner that keeps radiation doses to workers and members of the public below Commission-specified levels. Licensees must further reduce these doses to levels that are as low as reasonably achievable. Actual doses, in most cases, are a small fraction of the allowable limits.

In Kansas, licensees who hold low-level waste for decay must hold it for 10 half-lives of the isotopes, then survey the material to ensure that the level of radiation does not exceed background<sup>2</sup> levels. Once those two conditions have been met, the waste can be disposed of with other non-contaminated waste. Most licensees in Kansas who are permitted to hold low-level waste for decay use that procedure for waste contaminated with isotopes that have less than a 65-day half-life. Once at a disposal facility, low-level wastes are commonly deposited in near-surface facilities rather than in extremely deep underground vaults such as those required for high-level radioactive waste.

Low-level radioactive waste is packaged in containers specific to its level of hazard. Some low-level radioactive wastes require shielding with lead, concrete, or other materials to protect workers and members of the public. Workers are trained to maintain a safe distance from the more highly radioactive materials, to limit the amount of time they spend near the materials, and to monitor the waste to detect any releases.

Radioactive waste storage areas are posted to identify the radioactive waste so that workers and the public will not inadvertently enter the area. Nuclear power plants may store waste in special buildings that provide an extra degree of shielding. Safe distances must be maintained between the buildings containing radioactive material and the fence restricting public access to licensee property. Hospitals typically keep their waste stored in special containers or separate rooms.

Several generators of low-level waste in Kansas have received approval to transport those wastes for FY 2005 and FY 2006.

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<sup>1</sup>"Half-life" means the time required for any given radioisotope to decay to one-half of its original activity.

<sup>2</sup> In Kansas regulations, "background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material; and global fallout as it exists in the environment from the testing of nuclear explosive devices.

Bayer Corp Science (FY 03-FY 05)*	Fort Hays State University (FY 03-FY 05)*	Washburn University (FY 03-FY 05)*
Beta Chem (FY 03-FY 05)*	Kelley Instruments, Inc.	Wolf Creek Nuclear Operating Corporation
EaglePicher Pharmaceutical Services, L.L.C	Triumph Accessory Services (FY 04-FY 06)*	XenoTech, L.L.C
Emporia State University (FY04-06)*	University of Kansas	

\* "Very Small Generator / Occasional Shipper." This category has been approved to ship 50 cubic feet or less, and only once in a three-year period. These generators are identified by the fiscal years approved in parentheses following their name.

**Source:** Central Interstate Low-Level Radioactive Waste Commission

Currently, there are three low-level disposal sites in the country: Hanford, Washington; Clive, Utah; and Barnwell, South Carolina. Low-level waste generators located in Kansas transport waste to both the Utah and South Carolina sites. The following table displays the volume of waste moved from the Central Interstate Compact states to the South Carolina and Utah facilities during 2002.

**LOW-LEVEL RADIOACTIVE WASTE  
ACCEPTED FOR DISPOSAL AT BARNWELL,  
SOUTH CAROLINA**

State	Volume (cubic feet)
Arkansas	47,600
Kansas	552
Louisiana	426
Nebraska	621
Oklahoma	1
<b>Total Received in Year 2002</b>	<b>49,198</b>

**LOW-LEVEL RADIOACTIVE WASTE  
ACCEPTED FOR DISPOSAL AT  
ENVIROCARE (UTAH)**

State	Volume (cubic feet)
Arkansas	1,699
Kansas	185
Louisiana	17,712
Nebraska	1,461
Oklahoma	671,826
<b>Total Received in Year 2002</b>	<b>692,883</b>

Source: *Central Interstate Low-Level Radioactive Waste Commission Annual Report 2002-2003.*

**Status of the Central Interstate Low-Level Radioactive Waste Compact**

In response to the Low-Level Radioactive Waste Policy Act of 1980, Arkansas, Kansas, Louisiana, Nebraska, and Oklahoma formed the Central Interstate Low-Level Radioactive Waste Compact Commission in 1983. Each state is represented on the Commission by one voting member. The State of Kansas enacted legislation in 1982 that made the state a participant in the Compact. The Compact Commission is empowered to carry out the member states' duties and responsibilities regarding low-level radioactive waste management.

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**Kansas Legislative Action.** During the 1980s, the subject of low-level radioactive waste was addressed on several occasions by the Kansas Legislature. The Legislature enacted the Compact language in 1982 (K.S.A. 65-34a01, *et seq.*). The Compact was approved by Congress in 1986. In 1987, below-ground burial of low-level radioactive waste was prohibited in Kansas unless burial of those wastes provides greater protection to the environment and public health than above-surface disposal (K.S.A. 48-1620).

A site in Nebraska was chosen for the disposal facility and preparations began to obtain a state license. Almost immediately, controversy over the facility led to litigation between Nebraska and the Commission. In December 1998, Nebraska regulators denied the license application. After the license denial, three major waste generators of the Region filed a lawsuit against the State, claiming injury due to the 'bad faith' review by the state's regulators. In January 1999, the Commission joined that suit against the state. In September 1999, Nebraska notified the Commission of its intent to withdraw from the compact in 2004 pursuant to legislation that became effective in August. In 2003, the

Commission notified Nebraska that its membership would be revoked for failure to comply with terms of the compact and failure to meet its obligations. The state sued the Commission claiming that the revocation was unjustified and unlawful. In 2004, the bad faith case was decided in favor of the Commission by a federal court of appeals and a judgement of over \$151 million was assessed against the state.

A settlement of the outstanding issues between the Commission and Nebraska was reached in August, 2004. The settlement provides that the state's monetary obligation will be reduced to approximately \$141 million payable over a three-year period beginning August of 2005. That amount would be further reduced if the Commission and the state jointly negotiate access to the proposed low-level radioactive waste site in Texas or another site outside Nebraska. In exchange, Nebraska agreed to drop the revocation case and its application for U.S. Supreme Court review of the decision in the bad faith case. Another suit filed by utilities located in the compact states in 1999 also will be dropped under terms of the settlement. Wolf Creek Operating Corporation was a party to that suit. Once Nebraska fulfills its obligations under the settlement, the Commission and the contractor who would have operated the disposal facility in Nebraska will dismiss their appeals of the state's decision to deny the facility license. Finally, the settlement provides that the Commission will permit Nebraska to rejoin the Compact if necessary to obtain access to a disposal site. The latter action would be contingent upon re-enactment of the Compact by the Nebraska Legislature.

For more information, please contact:

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K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the  
**House Utilities Committee**

Presented by  
Ronald F. Hammerschmidt, Ph.D.  
Director, Division of Environment

January 28, 2005

Good morning Mr. Chairman and members of the committee. My name is Ron Hammerschmidt. I am the Alternate Commissioner for Kansas to the Central Interstate Low-Level Radioactive Waste Commission. The Commissioner Joseph Harkins sends his regrets and apology for not being available this morning.

Rather than attempt to give you a full history of the commission, I have included the 2003-2004 Annual Report from the Commission with the copy of my testimony. I will give you an update on recent commission activities. In August of 2004, the Commission accepted an offer of settlement from the State of Nebraska to resolve the long-standing court battle over the denial of a license for the proposed facility to be located in Boyd County Nebraska. Under the terms of the agreement, upon payment of the full amount agreed upon to the Commission by the State of Nebraska, its responsibilities as Host State are ended. The other major parts of the agreement are:

- Nebraska agrees to pay approximately \$141 million principal plus interest on or before August 1, 2008. The payments could be made in four payments of approximately \$38.5 million for a total of approximately \$154 million -- or less if early payment is made.
- Nebraska gave up appeals to the US Supreme Court.
- The Commission and Nebraska agreed to cooperate on seeking access to a Texas facility for nine months. If Nebraska needs to rejoin the compact in order to make an agreement work, the Commission would allow the action. In addition the state of Nebraska is allowed a discount of the settlement principal to \$130 million in the event such agreement with the Texas compact is achieved.

DIVISION OF ENVIRONMENT

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- The Commission and its contractor -- US Ecology -- will dismiss a contested case proceeding upon receipt of the payment(s).

The agreement was approved at a special meeting on August 9, 2004.

The Commission conducted its mid-year meeting in Oklahoma City, Oklahoma, on January 12, 2005. During that meeting, the Commission focused on three issues. The first was an examination of the options for use of the settlement funds. The options are wide ranging -- from retaining the funds for future use to dispersing all funds to parties demonstrating a claim. The Commission did not take action on any option. Rather the Chair, Catherine Sharp, Oklahoma Commissioner, appointed herself, and Mike Henry, Louisiana Commissioner, as the Claims Review Committee to work through the Commission's counsel to solicit claims from all parties that feel they have a claim to make against the settlement monies. The committee is to bring a recommendation to the next commission meeting on June 29, 2005 (tentative). In preparation for the discussion of the options for use of the funds, the Commission is asking each entity that has a claim on the money to submit an explanation of their claim and the amount to which they feel they are entitled. Wolf Creek Nuclear Operating Company (WCNOC) along with the State of Kansas will have a claim to be considered. Wolf Creek participated as a Major Generator in the siting and licensing-related activities. In addition, WCNOC was a plaintiff in the final court case along with others, including Entergy which has nuclear power plants in Arkansas and Louisiana. The State of Kansas has paid dues to the Commission since inception and made some payments that may be reimbursed.

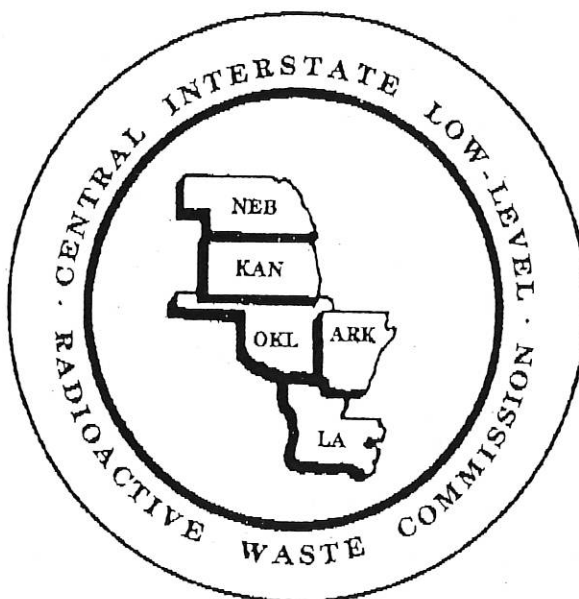
The second issue was the development of procedures and mechanisms to handle the money upon receipt. The Chair appointed the Kansas Commissioner Joe Harkins to act as the Financial Services Search Committee to look at options for holding and / or investing some or all of the money that the Commission is likely to receive from a payment in August 2005. The committee is to report recommendations at the June meeting. Since the Commission had the scandal of its first executive director diverting funds, the proper handling, accounting and auditing of financial dealings has and continues to be a priority.

The third issue was the development of disposal access for generators within the compact states. The Chair appointed herself and Laura Gilson, Commissioner from Arkansas, as the Disposal Negotiations Committee to work with the Commission's Counsel in continuing negotiations for disposal access. The Commission has continued to discuss long-term options with the Envirocare facility in Utah in addition to the activities related to the Texas compact and potential site. These activities are part of an effort to assure long-term disposal options for the generators of low-level radioactive waste in the compact states.

As I stated earlier, the next regularly scheduled meeting of the Commission is tentatively set for June 29, 2005. We would be happy to brief the Chair or entire Committee on the results of that meeting or provide any other information at your request. Thank you for your attention and the opportunity to address the committee.



# Central Interstate Low-Level Radioactive Waste Commission



**Annual Report  
2003-2004**

**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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**Central Interstate Low-Level  
Radioactive Waste Compact**

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## Commissioners

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Laura Gilson  
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#### Alternate

Bernie Bevill  
Radiation Control Division  
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### Kansas

James J. O'Connell  
Attorney

#### Alternate

Ron Hammerschmidt  
Director  
Division of Environment  
Kansas Depart Health &  
Environment

### Louisiana

Michael E Henry  
Senior Environmental Scientist  
Permits Division  
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

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## Developer

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## Host State Regulators

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Richard P. Nelson  
Director  
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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.

### Project Status Update

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 forthcoming. The Commission held two additional meetings to consider the terms of agreement and accepted (3-1

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

### Significant Events Recap

#### Commission Meetings

- Special Telephone Meeting October 1, 2003

A special meeting was held via teleconference. Six applications to export llrw from the Central States Region for fiscal year 2003-2004 were approved by the Commission.

The Commission passed a resolution by a 4-1 vote to formally request the Commission's outside legal counsel to respond to the Complaint filed on August 22, 2003, by the State of Nebraska in U.S. District Court for the District of Nebraska.

Nebraska's Rule 23 Complaint is the result of the Commission's vote, at the Annual Meeting held June 8, 2003, to revoke Nebraska's membership in the Compact and to impose sanctions as provided for in Commission's Rule 23.

- Emergency Telephone Meeting November 24, 2003

An emergency meeting was called for by the Chair to take action on export applications that had been submitted for review. All the applications were for fiscal year 2003-2004 with the exception on one Oklahoma generator for fiscal year 2001-2002. The Oklahoma generator's waste had met Envirocare's limited quantity requirements at the time of shipment, however had subsequently become part of a larger shipment coming from US Ecology of Oak Ridge. That facility was striving to shutdown its commercial operations by year's end and all client waste had been sent to Duratek for proper disposal. In preparation to ship waste to Envirocare, Duratek noted that the Oklahoma generator did not meet current Envirocare requirements and an authorization was requested. To avoid delays or rejection of the waste, prompt action by the

Commission was called for. All five of the export applications were approved by the Commission.

- Mid-Year Meeting January 21, 2004

The Central Interstate LLRW Commission's Mid-Year meeting was held in New Orleans, Louisiana on January 21, 2004. The Commission voted approval of one export application, meeting minutes, KPMG Audit for fiscal year 2002-2003, continued membership to the LLW Forum, and the Financial Consultant's contract for calendar 2004.

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

The Commission received oral reports from the Commission's Administrator, US Ecology and Outside Legal Counsel. Legal Counsel updated the Commission on a proposal made by an Indian tribe in Nebraska offering the use of their federally protected land with the final question being who would be responsible for regulation of it – Nebraska or

the Nuclear Regulatory Commission – a situation similar to the situation the Commission is currently dealing with. Counsel also reported on the zoning ordinances adopted in the summer of 2003 in Boyd County. Counsel's opinion drew a distinction between State law and Federal law on that portion of the ordinance that would require the Commission to obtain a special-use permit from the county before starting construction. The Commissioners instructed Counsel to write a letter to the Boyd County Commissioners relaying that as a matter of federal law that portion of the ordinance relating to nuclear waste disposal is invalid.

The Commissioners approved the renewal of the lease for the space that houses the executive office in Lincoln, Nebraska. The five year lease included a provision for an 18 month out with appropriate notice to the leasing agent.

- Emergency Telephone Meeting February 17, 2004

An emergency meeting was held for the purpose of responding to a request made by the State of Nebraska. Commission's outside legal counsel had participated in a telephone hearing conducted by the court regarding



scheduling matters in the revocation of membership lawsuit that was initiated by the State of Nebraska in August 2004. During that hearing counsel for the State reiterated the State's claim that it did not act in 'bad faith' and believed that it was obliged to either retry the 'bad-faith' case then on appeal or to seek a stay pending final disposition of that case. The Commissioners, after hearing from legal counsel for the Commission and counsel for the State of Nebraska voted to reject the State's request to join them in a stay.

The Commission also approved two non-federal generators of low level radioactive waste to export during fiscal year 2003-2004.

- Annual Meeting  
June 8, 2004

The Annual Meeting of the Central Interstate LLRW Commission was held in Lincoln, Nebraska. The Commissioners came together to take action on normal administrative business that included the approval of US Ecology's funding request for fiscal year 2004-2005, the Commission's administrative budget and the setting of export fees for the coming fiscal year. The

Commissioners also elected the Arkansas Commissioner to serve as Chair for fiscal year 2004-2005.

The administrator reported that monies owed the major generators had been returned to them and that included the remaining \$100,000 of the Guarantee Fund plus interest and a small remainder left in the Project Fund.

Commission's outside legal counsel updated the Commissioners on the two pieces of ongoing litigation, the 'bad faith' litigation and the 'revocation of membership' litigation. The Commissioners agreed that an executive session would be necessary for a more in depth briefing on legal matters and the negotiations that had begun with the State of Nebraska in an attempt to settle the litigation. The Nebraska Commissioner rescued himself from the litigation portion of the executive session due to the sensitivity of the negotiations.

Upon returning to open session the Chair indicated that the Commissioners had reviewed a settlement offer made by the State of Nebraska and that a counter-proposal would be offered in the near future. The Commissioners also adopted a Resolution that related to the State's passage

of LB 692 -- the Bill reduced the interest rate that Nebraska pays on judgments. The Resolution instructed the Commission's outside legal counsel to pursue all available legal remedies to enforce the collection of the Commission's judgment upon the first opportunity after the stay is dissolved, including a new bad-faith lawsuit against the State of Nebraska over the interest rate change.

- Special Telephone Meeting  
July 7, 2004

A special meeting via telephone was called for to take action on one federal export application, seven non-federal export applications and four utility export applications. All submitted applications to export llrw were approved for fiscal year 2004-2005.

The Commissioners approved an assessment of administrative support fees that would allow the two Nebraska utilities to continue to contribute financially to the Commission. With Nebraska's release from the Compact date of July 18, 2004, this provision will permit the Nebraska utilities to claim or retain their potential financial and waste disposal interests until such a time when litigation over the license denial is resolved. The Nebraska

utilities will be invoiced quarterly in the amount of 25% of the approved export fee for the major generator/utility category.

The Commissioners from Arkansas, Kansas, Oklahoma and Louisiana gave their best wishes to the Commissioner from Nebraska as this was his last meeting of the Commission and thanked him for his service.

- Emergency Meeting July 23, 2004

The Commission came together in an emergency meeting held in Overland Park, Kansas. The meeting was called so that Commission's outside legal counsel could update the Commissioners on the progress of the negotiations with the State of Nebraska and to receive guidance as to further negotiations. The legal briefing was conducted during executive session.

Upon returning to open session, the Chair indicated that no action had been taken other than to give guidance to legal counsel.

The Chair introduced another matter with respect to export application approval. She suggested that the Commission Rules be reviewed

and updated so as to provide a more timely approval process of export applications.

- Emergency Telephone Meeting August 9, 2004

An emergency telephone meeting was called so that the Commissioners could consider a revised proposal of settlement for the outstanding legal disputes between the Commission and the State of Nebraska. The Kansas Commissioner requested an executive session to discuss a couple of points with legal counsel and the other Commissioners.

Upon returning to the open session, the Chair indicated that there had been some discussion on the language of the draft settlement during executive session and asked for a vote on the Resolution to adopt the proposed settlement agreement with the Commission in agreement that the effective date of the settlement would be August 1, 2004. The Commission adopted the Resolution with a 3-1 vote.

The Kansas Commission voted against the settlement agreement. He expressed disappointment with the settlement agreement and stated "... this is happening at

a time when there is no presently available complete disposal option and at a time when the need for safe and secure disposal of radioactive waste has probably never been greater."

The Commission also approved two non-federal export applications.

### Host State- Nebraska

On September 30, 2002, U. S. District Court Judge Kopf handed down his decision in the lawsuit between the Central Interstate LLRW Commission and the State of Nebraska. Judge Kopf ruled in favor of the Commission and awarded damages of \$151 million. The State of Nebraska filed a request for a stay of the ruling on October 1, 2002 that signaled Nebraska's intent to appeal to the Eighth Circuit Court of Appeals.

On October 30, 2002 the state initiated the appeals process by filing a Notice of Appeal in the U.S. District Court for the District of Nebraska. The appeal challenged the Courts findings that Nebraska acted in 'bad faith' in reviewing the license application for the purposed llrw disposal facility. Also challenged was the Court's damage award of \$151

million to the Central Interstates LLRW Commission and the Court's denial of the state's request for a jury trial among other issues. The appellate court heard oral arguments on June 12, 2003 and on February 18, 2004, the 8<sup>th</sup> Circuit Court of Appeals upheld the lower court's ruling.

The State of Nebraska filed a petition for rehearing en banc on March 2, 2004 with the 8<sup>th</sup> Circuit Court of Appeals arguing that the state did not expressly waive its sovereign immunity from an award of money damages, money damages are not appropriate either at law or at equity, and the denial of a jury trial was in error. On April 22, 2004, the 8<sup>th</sup> Circuit Court of Appeals denied Nebraska's petition for rehearing en banc.

On July 16, 2004, Nebraska asked the U.S. Supreme Court to hear its appeal.

Also in July 2004, the State of Nebraska made public its proposal to the State of Texas to allow llrw generated within the Central States region to be disposed of at the planned Texas Compact site.

Nebraska's Legislature voted down a Bill that would have imposed a 3.5 percent tax on electric bills in the state to help pay for the judgment and

passed legislation that reduced the interest rate that the state pays on judgments from 10% to a flexible rate that changes with U.S. Treasury note yield. Nebraska's Governor signed the legislation on April 15 and it became effective on July 16, 2004.

The State of Nebraska entered into settlement talks with the Commission after the rehearing en banc was denied by the 8<sup>th</sup> Circuit and signed off on a settlement agreement that was approved by the Commission at its August 9<sup>th</sup> telephone meeting.

In April 2003, the state presented evidence at the Commission's Rule 23 Proceeding that began in 1999 following the receipt of notification of Nebraska's decision to withdraw from the Compact. The arguments presented were that the state acted in 'good faith,' in a timely manner and without political interference; that the state's administrative process is not yet complete therefore the Commission's determination on Nebraska's fulfillment of its obligations is premature; that the Commission may not sanction the state for exercising its right to withdraw from the Compact; that the state is entitled to an unbiased neutral decision-maker; that the Commission's authority to

revoke a state's membership is limited by the terms of the Compact; and that Nebraska has no continuing host state obligations under the Compact.

On June 25, 2003, the Commission voted to revoke Nebraska's membership to the Central Interstate LLRW Compact. The state filed a brief in U.S. District Court contesting the revocation of membership on August 22, 2003. Nebraska challenged the Commission's vote to impose sanctions claiming they are invalid and unenforceable because they violate state and federal law and the express terms of the Central Interstate LLRW Compact.

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

## Legislature

Legislative Bill 692 was adopted and approved by the Governor during the State of Nebraska's 98<sup>th</sup> legislative second session. This Bill reduced the interest rate Nebraska pays on court judgments from 10% to a lower, flexible rate that changes with a U.S. Treasury note yield. No other Bills were adopted that would affect the Commission.

## NDEQ 2002 Annual Report

The Low-Level Radioactive Waste Program (LLRW Program) was created to administer the Nebraska Department of Environmental Quality's (NDEQ) responsibilities as outlined in Nebraska State Statute through the Low-Level Radioactive Waste Disposal Act. The LLRW Program is a cooperative effort of NDEQ and the Nebraska Department of Health and Human Services Regulation & Licensure (NDHHSR&L). Their regulatory responsibility is to conduct a technical review of any proposal to build and operate a LLRW disposal facility in the state.

The State strongly disagreed with the federal court's

decision, handed down in favor of the Commission on September 30, 2002, that there was political influence in the license decision-making process and appealed the decision to the 8<sup>th</sup> Circuit of Appeals. (On February 18, 2004, the 8<sup>th</sup> Circuit Court of Appeals affirmed the district court opinion. Nebraska then sought a rehearing and on April 24, 2004, the Court denied that request as well.)

In August of 1999, the State notified the Commission of the legislative decision to withdraw from the Compact. Compact rules outline a five year effective date from notification to the member states. Commission Rules provide for its members sanctions that may be invoke against a withdrawing state that has not fulfilled its obligations and on June 25, 2003, the Commission voted to revoke Nebraska's membership in the Compact and imposed several sanctions upon the State. The State in turn filed a Complaint disputing the sanctions imposed by the Commission as violating state and federal law and the express terms of the Compact law. Trial was expected in June of 2004.

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, 2003 reported that no funds have been collected from US Ecology for this purpose since the March 1999 restraining Court order. The Department has paid LLRW Program expenses from the State's general fund budget and from Cash Fund transfers.

Actual funds expended in fiscal year 2003 totaled \$7,330,056 for the Low-Level Radioactive Waste Program. The report indicates that the LLRW Program's proposed budget for fiscal year 2004 is \$954,236.

### Developer-US Ecology

The Commissioners voted to approve funding for US Ecology for fiscal year 2004-2005 to continue site maintenance, to provide information and support on legal issues, to maintain project documents and materials, and remain available for any new issues that may arise during the year.

US Ecology reported activities to the Commission at the January and June 2004 meetings that included the following:

Annual inspection of geologic core samples from the Butte

site that are stored in Lincoln in a bonded warehouse. A checklist was prepared of approximately 500 line items tabulating identifiers for specific boreholes and core storage containers so as to facilitate more efficient future inspections.

Oversight and annual inspection of the site for the proposed disposal facility in Butte.

US Ecology and its counsel monitored and reported to the Commission on the activities of Boyd County relating to the new zoning ordinance that was adopted by the county that would require the Commission to obtain a "special use" permit to begin construction.

Responded to the State of Nebraska regarding allegations of Corporate Farming on the Butte site. This is a prohibited practice in Nebraska that had arisen due to the arrangement made with a local resident to mow the site and remove the clippings. The response satisfied the State that Corporate Farming is not taking place on the site property.

Provided schedules and financial data to US Ecology and Commission counsels during negotiations to settle the Judgment against the State.

## Waste Report

This year's Waste Survey was included in the Commission's mailing of the 2003-2004 export applications. The survey was also made available to those generators using the Commission's web site. Fourteen shippers responded to the survey. Respondents included 4 medical facilities, 6 higher education facilities, 3 utilities and 1 industrial facility.

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

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

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

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

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

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

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

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

Disposal Information

In previous issues of the Commission's Annual Report disposal information was retrieved from the Manifest Information Management System (MIMS), a database maintained by DOE. Due to the shortcomings in the data reliability, as noted in the June 2004 GAO Report (GAO-04-604), the chart below is data obtained directly from

Barnwell and Envirocare. DOE is aware of the shortcomings and is working to correct the data presented on the MIMS website.  
(<http://mims.apps.em.doe.gov>)

The Commission approved 34 export applications for this reporting period:

5 from Arkansas,  
8 from Kansas,  
5 from Louisiana,

8 from Nebraska and  
8 from Oklahoma.

Waste by State Summary Report by year through 6/28/2004							Calendar Year
		Barnwell			Envirocare		CIC
		Cubic Feet	Class B	Class C	Cubic Feet		TOTAL
		Volume	Volume	Volume	Class A Vol		Cubic Feet
							VOLUME
Arkansas	2002	91.257	22.790	10.200	1,684.000		1,775.257
	2003	2,630.860	787.090	703.320	4,343.000		6,973.860
	2004	48.326	39.970	8.356	2,194.000		2,242.326
Kansas	2002	622.750	28.361	315.486	164.000		786.750
	2003	255.647	78.480	22.967	573.000		828.647
	2004	308.450	46.800	34.750	932.000		1,240.450
Louisiana	2002	478.803	182.630	99.860	2,357.000		2,835.803
	2003	286.434	101.952	129.962	7,701.000		7,987.434
	2004	175.546	132.330	43.216	1,560.000		1,735.546
Nebraska	2002	618.840	136.300	187.848	1,403.000		2,021.840
	2003	1,081.054	267.890	1.530	1,766.000		2,847.054
	2004	121.729	120.300	0.400	1,719.000		1,840.729
Oklahoma	2002	2.000	0.000	1.500	671,422.000		671,424.000
	2003	13.030	0.000	3.530	232,079.000		232,092.030
	2004	1.800	0.000	0.300	296,055.000		296,056.800
CIC TOTALS	2002	1,813.650	370.081	614.894	677,030.000		678,843.650
	2003	4,267.025	1,235.412	861.309	246,462.000		250,729.025
	2004	655.851	339.400	87.022	302,460.000		303,115.851

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## 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.

**Export Applications for FY04-05 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 12, 2005 and is to be in Oklahoma City, Oklahoma**

### **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, 2004

**Rebate Funds**

**\$829,461** <sup>Principal</sup>

Rebate funds can only be spent to:

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

**Subsequent Event**

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

**Commission Cash Expenditures for Fiscal Year 2003-2004 and Budget for Fiscal Year 2004-2005**

Expense	FY01-02	FY02-03	FY03-04 Budget	FY03-04 Actual	FY04-05 Budget
Salaries & Benefits	90,364	75,987	89,169	63,429	88,104
Rent	27,722	27,627	29,000	28,092	30,000
Telephone	4,009	4,217	6,000	4,887	6,000
Postage	608	730	1,500	743	1,500
Copy & Printing	101	237	500	287	500
Machine Lease & Maintenance	2,863	2,745	4,000	2,060	4,000
Meeting Transcriptions	1,160	2,273	4,000	1,816	4,000
Dues & Subscriptions	8,491	8,631	9,000	8,842	9,000
Office Equipment & Supplies	4,666	4,544	5,000	4,486	5,000
Travel & Meeting Expense	4,166	4,630	9,000	4,436	9,000
Insurance	3,042	3,256	4,000	3,660	4,000
Accounting	19,100	20,700	22,000	20,200	22,000
Legal Fees	1,157,622	432,880	350,000	147,759	250,000
Miscellaneous	4	89	500	60	500
Cash Reserve / Recover Shortfall		149,500	40,000	0	0
Butte Site Maintenance / USE	262,296	58,298	52,591	33,706	53,109
<b>Total</b>	<b>1,586,213</b>	<b>796,344</b>	<b>626,260</b>	<b>324,463</b>	<b>486,713</b>

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

Financial Statements

June 30, 2004 and 2003

(With Independent Auditors' Report Thereon)

## Independent Auditors' Report

The Commissioners  
Central Interstate Low-Level  
Radioactive Waste Commission:

We have audited the accompanying statements of net assets of the Central Interstate Low-Level Radioactive Waste Commission (Commission) as of June 30, 2004 and 2003, and the related statements of revenues, expenses, and changes in net assets and cash flows for the years then ended. These financial statements are the responsibility of the Commission's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the Central Interstate Low-Level Radioactive Waste Commission as of June 30, 2004 and 2003, and the respective changes in financial position and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

As described in note 2, the Commission adopted on July 1, 2003 the provisions of Governmental Accounting Standards Board (GASB) Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*; GASB Statement No. 37, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments: Omnibus*; and GASB Statement No. 38, *Certain Financial Statement Note Disclosures*.

In accordance with *Government Auditing Standards*, we have also issued our report dated August 17, 2004, on our consideration of the Commission's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, grants, agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audits.

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

/s/ KPMG LLP

Omaha, Nebraska  
August 17, 2004

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

Statements of Net Assets

June 30, 2004 and 2003

Assets	<u>2004</u>	<u>2003</u>
Current assets:		
Cash and cash equivalents	\$ 513,150	221,984
Restricted assets:		
Rebate fund	943,403	626,089
Guarantee fund	—	400,000
Project fund	—	5,896
Receivable from the State of Nebraska	130,000,000	—
Total restricted assets	<u>130,943,403</u>	<u>1,031,985</u>
Capital assets	85,608	82,743
Less accumulated depreciation	<u>81,345</u>	<u>78,487</u>
Total capital assets, net	<u>4,263</u>	<u>4,256</u>
Total assets	<u>\$ 131,460,816</u>	<u>1,258,225</u>
<b>Liabilities and Net Assets</b>		
Current liabilities:		
Accounts payable	\$ 32,093	178,357
Accrued expenses	<u>107,029</u>	<u>10,072</u>
Total liabilities	<u>139,122</u>	<u>188,429</u>
Net assets:		
Invested in capital assets	4,263	4,256
Restricted	130,943,403	1,031,985
Unrestricted	<u>374,028</u>	<u>33,555</u>
Total net assets	<u>131,321,694</u>	<u>1,069,796</u>
Total liabilities and net assets	<u>\$ 131,460,816</u>	<u>1,258,225</u>

See accompanying notes to financial statements.

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

Statements of Revenues, Expenses, and Changes in Net Assets

Years ended June 30, 2004 and 2003

	2004	2003
Operating revenues:		
Commission member fees	\$ 125,000	125,000
Export application fees	585,875	656,900
Other	325	50
Total operating revenues	711,200	781,950
Operating expenses:		
Salaries and benefits	66,948	73,821
Professional services	210,384	452,958
Office and administrative	21,729	22,880
Rent	28,092	27,627
Travel	3,823	4,630
Depreciation	2,858	2,392
Refund to major generators	105,896	—
US Ecology site maintenance	17,853	21,158
US Ecology consulting	26,883	37,229
Total operating expenses	484,466	642,695
Total operating income	226,734	139,255
Nonoperating revenues:		
Interest income	25,164	26,286
Proceeds from litigation settlement	130,000,000	—
Total nonoperating revenues	130,025,164	26,286
Change in net assets	130,251,898	165,541
Net assets:		
Beginning of the year	1,069,796	904,255
End of the year	\$ 131,321,694	1,069,796

See accompanying notes to financial statements.

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

Statements of Cash Flows

Years ended June 30, 2004 and 2003

	2004	2003
Cash flows from operating activities:		
Receipts from customers	\$ 711,200	450,175
Payments to employees	(66,948)	(73,821)
Refund to major generators	(105,896)	—
Other payments	(358,071)	(756,825)
Net cash provided by (used in) operating activities	180,285	(380,471)
Cash flows from capital and related financing activities:		
Purchases of capital assets	(2,865)	(1,479)
Net cash used in capital and related financing activities	(2,865)	(1,479)
Cash flows from investing activities:		
Interest received	25,164	26,286
Net sales of certificates of deposit	88,582	106,435
Net cash provided by investing activities	113,746	132,721
Net increase (decrease) in cash and cash equivalents	291,166	(249,229)
Cash and cash equivalents at beginning of year	221,984	471,213
Cash and cash equivalents at end of year	\$ 513,150	221,984
Reconciliation of operating income to net cash provided by (used in) operating activities:		
Operating income	\$ 226,734	139,255
Adjustments to reconcile operating income to net cash provided by (used in) operating activities:		
Depreciation expense	2,858	2,392
Changes in assets and liabilities:		
Accounts payable	(143,264)	(190,937)
Accrued expenses	96,957	594
Unearned export application fees	(3,000)	(331,775)
Net cash provided by (used in) operating activities	\$ 180,285	(380,471)

See accompanying notes to financial statements.

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## Notes to Financial Statements

June 30, 2004 and 2003

### (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 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 (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.

In June 1999 and June 2001, the GASB issued in Statement No. 34, *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments: Omnibus*, and GASB Statement No. 37, *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments; Omnibus*, respectively. In June 2001, the GASB issued Statement No. 38, *Certain Financial Statement Disclosures*, those statements adopted by the Commission to make several changes to the presentation of the financial statements. In order to conform to the requirements of GASB Nos. 34, 37, and 38, the following significant changes have been made to the Commission's financial statements:

- Fund equity has been reclassified;
- Expanded disclosures for capital assets; and
- Statements of cash flows are prepared using the direct method.



(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, 2004 and 2003.

**Commission Member Fees**

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

**Export Application Fees**

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

(c) *Property and Equipment*

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

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

The Commission agreed to guarantee payment by US Ecology of certain licensing activity costs incurred by the State of Nebraska. Related to this guarantee, the Commission was obligated to create and maintain a segregated restricted account with a balance of \$1,000,000 for a guarantee fund, if needed, for payment of the State of Nebraska's licensing expenses and payments to its contractors in the license application and review process should US Ecology default on preclicensing payments to the State of Nebraska. Commission management believes that presently no circumstances exist to necessitate the use of monies in the guarantee fund for payment of licensing costs incurred by the State of Nebraska. At the end of the preclicensing period, when the license decision is final, the guaranty provisions expire. During the year ended June 30, 2003, the Commission deter-

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mined the \$1,000,000 guarantee fund was no longer needed and approved release of those funds securing the guaranty. At June 30, 2004 and 2003, \$300,000 and \$600,000, respectively, were invested in long-term certificates of deposit which are recorded in the rebate fund in the statements of net assets and \$100,000 (plus accrued interest) was returned to the major generators during 2004.

*(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.

*(f) Use of Estimates*

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses 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, 2004 and 2003, the Commission had \$1,456,553 and \$1,250,548, respectively, invested in short-term federal investment trust accounts backed by the full faith of the federal government. At June 30, 2004, accounts payable include checks issued but not yet presented for payment totaling \$15,398. At June 30, 2003, the Commission had \$3,421 of cash covered by FDIC deposit insurance.

**(4) Capital Assets**

Capital asset activity for the years ended June 30, 2004 and 2003 is shown below:

**(5) Contractual Agreements**

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

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

**(6) Legal Proceedings**

In December 1998, the State of Nebraska denied US Ecology's license to build and operate the facility. In June 1999, Nebraska passed a law that would withdraw Nebraska from the Commission effective in August 1999. Nebraska would remain a member for up to five years after its notice to withdraw was submitted to the Commission. The Commission joined in a lawsuit with

the major generators and US Ecology against the State of Nebraska for licensing of the site or damages, or both, for a bad-faith denial by Nebraska. The case was tried commencing June 3, 2002 and ended July 31, 2002.

On September 30, 2002, the court entered judgment in favor of the Commission in the amount of \$151,408,240, plus postjudgment interest until paid. The major generators and US Ecology filed cross claims against the Commission for equitable subrogation or reimbursement due to this judgment. The State of Nebraska appealed the decision. The parties submitted briefs and, on June 12, 2003, the Eighth Circuit Court of Appeals heard oral argument. On February 18, 2004, the Eighth Circuit Court of Appeals upheld the original judgment and on April 21, 2004 denied any re-hearings of the case.

On August 17, 2004, the State of Nebraska and the Commission reached a settlement to resolve this lawsuit effective August 1, 2004. Under the terms of the agreement, the State of Nebraska has agreed to pay \$140,541,077 over four years at an interest rate of 3.75%, resulting in four equal annual payments of \$38,489,809 beginning on August 1, 2005. Because the settlement resolved the existing contingencies regarding the Commission's receipt of these amounts, the Commission has recorded a receivable from the State of Nebraska and recognized nonoperating income in the amount of \$130,000,000. The difference of \$10,541,077 is related to a contingent discount available to the State of Nebraska on its final principal payment. The discount is 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.

As a result of this settlement, the State of Nebraska's appeal to the United States Supreme Court has been dismissed. Upon timely payments by the State of Nebraska, this agreement shall be deemed a full release of all claims that were or could have been brought in this case. In addition, upon timely payment of all amounts owed the Commission, the State of Nebraska will have no further host-state or other Commission obligations and all prior liabilities will be deemed satisfied.

At this time, the future obligations of the Commission, with respect to the settlement proceeds, are not known. Accordingly, a corresponding liability for the use of the proceeds has not been recorded. The proceeds are required to be used for purposes consistent with the Low-Level Radioactive Waste Policy and the Compact. Accordingly, these amounts have been recognized as restricted net assets in the accompanying financial statements.

(7) **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:

Total rent expense charged to operations was \$28,092 and \$27,627 for the years ended June 30, 2004 and 2003, respectively.

**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, 2004 and have issued our report thereon dated August 17, 2004. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

***Internal Control Over Financial Reporting***

In planning and performing our audit, we considered the Commission's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses.

***Compliance and Other Matters***

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

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

/s/ KPMG LLP

Omaha, Nebraska  
August 17, 2004