

# MAINE STATE LEGISLATURE

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STATE OF MAINE



**ADVISORY COMMISSION  
ON RADIOACTIVE WASTE**

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**1992 ANNUAL REPORT**

**PLEASE NOTE**

***THE MAINE ADVISORY COMMISSION ON RADIOACTIVE WASTE  
AND THE MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY  
ARE SEPARATE AGENCIES  
WITH DIFFERENT LEGISLATIVE MANDATES.***

***THE REPORT YOU ARE READING  
DESCRIBES 1992 ACTIVITIES OF THE  
MAINE ADVISORY COMMISSION ON RADIOACTIVE WASTE.  
THE MAINE ADVISORY COMMISSION ON RADIOACTIVE WASTE  
IS NOT RESPONSIBLE FOR SITING  
A MAINE LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY.***

ANNUAL REPORT  
of the  
ADVISORY COMMISSION ON RADIOACTIVE WASTE  
for the calendar year 1992

**Introduction**

The Advisory Commission on Radioactive Waste is the only state agency charged by the legislature to collect, analyze, and disseminate information on all aspects of radioactive waste management.

The legislature created the Advisory Commission in 1985, as a successor to the Low-level Waste Siting Commission. The Advisory Commission's purpose is "to advise the Governor and the Legislature on matters relating to radioactive waste management...." Its duties, as listed in the statute, are:

- A. Study the management, transportation, storage and disposal of radioactive waste, including low-level and high-level radioactive waste generated in or near this State;
- B. Evaluate methods and criteria for siting and constructing low-level radioactive waste disposal or storage facilities;
- C. Evaluate methods and criteria for siting and constructing high-level radioactive waste repositories or storage facilities;
- D. Advise the Governor and the Legislature on the findings and recommendations of the commission;
- E. Assist the Governor in regional efforts to manage radioactive waste; and
- F. Provide opportunities for public input, disseminate information to the general public and promote public understanding concerning radioactive waste issues.

The Advisory Commission has 14 members: six legislators, four administrators, two representatives of the public, and two representatives of radioactive waste generators. The Commission's three staff members (one full-time, two half-time) work in an office in the Maine State Retirement Building.

The following pages summarize major developments in 1992 in the federal high-level waste program (Section A) and Maine's low-level waste program (Section B). Sections C and D describe Advisory Commission activities. Appendix I contains excerpts from the 1992 U. S. Supreme Court decision on the federal low-level waste law. Financial information prepared by the Maine Department of Environmental Protection is included as Appendix II. The Commission is funded by an annual assessment on Maine low-level radioactive waste generators, with the money administered by DEP.

## **A. High-level waste**

High-level radioactive waste includes spent fuel rods from nuclear power plants. The Maine Yankee plant at Wiscasset is the only generator of civilian high-level radioactive waste in Maine. The federal government, specifically the U. S. Department of Energy, has responsibility for providing a permanent disposal facility for high-level waste. Until DOE opens a national facility, Maine Yankee will continue to store spent fuel rods on-site.

Under the first (1982) federal high-level waste law, DOE did a nation-wide screening for two sites for an underground high-level waste repository. The list of candidate sites in the eastern part of the country, released in January 1986, included two sites in Maine granite, one near Sebago Lake and one near Bottle Lake northeast of Bangor. Public outcry led DOE to suspend the site search in May 1986. At the end of the year, Congress passed a new high-level waste law directing DOE to study only Yucca Mountain, Nevada, as a potential repository site. If DOE finds Yucca Mountain is not suitable, the agency is to report to Congress for new direction. DOE's Yucca Mountain studies continue; a repository there is not projected to open before 2010.

High-level waste management is financed by an assessment on utilities that operate nuclear power plants. Contracts setting up payment schedules call for DOE to begin accepting power plants' spent fuel in 1998. Because the repository will not be open by 1998, DOE proposes siting and building a temporary monitored retrievable storage facility (MRS).

In 1987, Congress established the position of Nuclear Waste Negotiator, and in 1990 President Bush appointed former Idaho lieutenant governor David Leroy to the post. Mr. Leroy's job is to find a willing host for a temporary (or permanent) high-level waste facility. DOE provides grants to help interested governmental units (states, counties, Indian tribes) evaluate potential sites.

In the fall of 1991, Mr. Leroy sent invitations to volunteer to all state governors and tribal leaders. Since then, about two dozen entities have expressed interest; fewer than half have received DOE study grants, and some of those have given up the idea. No one in Maine has expressed interest in volunteering a site for a national high-level waste facility.

To have an MRS open in 1998, the volunteered site needs to be submitted to Congress this spring. Mr. Leroy says he believes he can get at least one volunteer in the next few months, although he also says deadlines should not be allowed to hamper his work. In December 1992, outgoing Secretary of Energy James Watkins proposed supplementing Mr. Leroy's approach by looking at federal facilities, especially those that already handle nuclear materials, as potential MRS sites.

Maine Yankee officials expect the nuclear power plant's spent fuel pool to reach capacity in 1999. Other nuclear power plants are already running out of pool space. The options being used by the industry for providing increased storage space include reracking and dry storage.

The Advisory Commission on Radioactive Waste monitors high-level waste developments on the state and national levels. The Commission's monthly Update newsletters frequently contain information on DOE's high-level waste program and related issues. Should high-level waste management plans again affect Maine residents, as they did in 1986, the Advisory Commission has background information to help Commission members, lawmakers, and residents respond appropriately.

## **B. Low-level Waste**

Under federal law (the 1980 Low-level Radioactive Waste Policy Act and the 1985 Low-level Radioactive Waste Policy Amendments Act), providing disposal facilities for low-level radioactive waste is a state responsibility. The law encourages states to form regional disposal compacts. As of the end of 1992, 42 states were members of eight compacts. Maine, Vermont, Massachusetts, New York, and Texas were each trying to site a single-state facility. Michigan, the former designated host state for the Midwest Compact, was regrouping after being thrown out of the compact for failing to find a facility site. New Hampshire, Rhode Island, the District of Columbia, and Puerto Rico had done nothing to comply with the federal law.

In June 1992 the United States Supreme Court ruled on the constitutionality of the 1985 Low-level Radioactive Waste Policy Amendments Act, in the case of *New York v. the United States*. The Court's majority opinion found the act constitutional except for the final penalty for non-compliance, the so-called take-title provision. This provision says a state which does not provide a disposal facility by Jan. 1, 1996, must, at a generator's request, take title to and possession of the generator's waste and be liable for any damages from its failure to take title and possession. The Supreme Court ruled the take-title provision was severable from the rest of the law, which remains in effect. *[See Appendix I, pp. 9-11, for excerpts from the majority opinion.]*

The Court ruling spawned arguments over its effect on state low-level waste disposal programs. Most people involved in low-level waste management, like utility executives and waste disposal authority members, believe the ruling has little practical effect. The waste is still there, and the state is still responsible for it, in their view.

Many facility opponents, however, believe the Supreme Court ruling should be a reason to stop facility siting efforts. Their arguments are usually based on excerpts from the Court opinion dealing with states' rights and states' residents' rights.

Maine officials have not stopped efforts to obey the federal law. These efforts take two forms:

1) State law says Maine's preferred alternative is out-of-state disposal. Public Advocate Stephen Ward has been Governor John McKernan's representative in negotiations with other states that might accept Maine's waste.

2) In 1987, the legislature created the Maine Low-level Radioactive Waste Authority, a seven-person board charged to plan, site, build, run, and close an in-state low-level waste disposal facility if Maine has to have one.

Maine's progress toward building its own low-level waste disposal facility was sufficient to meet the 1986, 1988, and 1990 milestones — interim deadlines, each with its rewards for success and penalties for failure — in the 1985 federal law. The state did not meet the Jan. 1, 1992, milestone requiring that a complete facility license application be filed with the federal Nuclear Regulatory Commission. The penalty for not meeting the milestone was that in 1992, Maine generators paid a \$120 per cubic foot surcharge for waste sent to any of the three commercial disposal facilities.

Under the 1985 law, the three commercial facilities — in Beatty, Nevada, Barnwell, South Carolina, and Richland, Washington — were allowed to close or restrict access beginning Jan. 1, 1993. The Beatty facility closed at the end of 1992. The Richland facility will henceforth serve only generators in 11 states in the North-west and Rocky Mountain compacts. The Barnwell facility remains open to serve eight Southeast Compact states while work continues toward a replacement in North Carolina.

Barnwell is also accepting out-of-region low-level waste, for a \$220 per cubic foot surcharge plus disposal fees. Acceptance depends on a contract between each state and the Southeast Compact Commission, required before individual generators can sign disposal contracts. Under Maine law, a state contract needs ratification by voters at a state-wide referendum. As of the end of 1992, no contract had been signed. Governor McKernan had asked Southeast Compact officials to waive the state-contract requirement, and was waiting for a response.

For at least the beginning of 1993, Maine generators' only option is to store their low-level waste on site. According to generators' responses to the most recent annual survey done by the Department of Environmental Protection, every generator has room to store at least one year's waste.



**Out-of-state disposal negotiations.** Over the last decade, Maine has pursued three options in efforts to dispose of low-level waste outside the state.

✦ Maine officials have negotiated sporadically to form a northeast compact with two or more other states in the region. Nothing has come of any effort so far, primarily because Maine people do not share other states' view of Maine's "wilderness" as a potential dumping ground. There were no active negotiations during 1992, although some of the Maine Authority staff continued to talk informally with counterparts in other New England states.

✦ In the early 1990s, Public Advocate Stephen Ward talked with officials in California about Maine's sharing the proposed Southwest Compact facility in Ward Valley, in the California desert. California officials were not interested in considering more compact partners until their facility (originally scheduled to open in 1992) was licensed. It has not reached that stage, because of legal tangles and political and public opposition. During 1992, Maine made no progress in trying to send its low-level waste to California.

✦ A compact between Maine and Texas (or among Maine, Vermont, and Texas) seemed the most promising out-of-state option for most of 1992. After two false starts, the Texas Low-level Radioactive Waste Authority bought and is studying a potential facility site in west Texas. The Texas legislature amended state law to allow Texas to accept out-of-state waste from a few compact partners; Maine, with its small annual waste volume and its willingness to contribute to Texas' building costs, meets the legislative requirements for compacting with Texas. An apparent advantage for Texas stems from the 1985 federal law, which allows compacts' facilities to refuse to take out-of-region waste. The law does not say single states may do the same thing, and a state that tried might find itself in violation of the interstate commerce clause of the United States Constitution. However, in September 1992 the Texas Attorney General told Governor Ann Richards he believes Texas may be able to refuse out-of-state waste without joining a compact. Governor Richards suspended negotiations with Maine while the issue is explored and resolved.

In the summer of 1992, Mr. Ward thought negotiations between Texas and Maine might lead to a draft compact that could be submitted to the Texas and Maine legislatures in January 1993. Should negotiations resume, the compact might still be presented to Maine's 116th legislature. The document would also need approval by Governor McKernan and by Maine voters in a state-wide referendum.

The Advisory Commission on Radioactive Waste has background information on earlier efforts to form a regional compact and on the California and Texas low-level waste management programs. Should Maine legislators be asked to act on a proposal for out-of-state disposal, the Advisory Commission's resources would be available to them.



**The in-state disposal program.** During 1992, the Maine Low-level Radioactive Waste Authority continued its search for a site for an in-state disposal facility. The Authority is proceeding on two converging tracks:

- + It has advertised for volunteered sites, and after preliminary site studies retained three on its list for further study.

- + It has conducted a state-wide screening which led to the selection last spring of 12 potential candidate sites, narrowed to 10 in May and to nine in September.

The Authority's consultants have done preliminary studies on all 12 sites still under consideration. The Town of Pittston challenged in court the Authority's right to study land in town without obtaining a Planning Board permit as required by town ordinance. The Town lost its case in District Court in December and decided not to appeal.

The Authority has option agreements on the volunteered sites in Unity Township and in T2 R9 NWP and has a comparable agreement with Maine Yankee to allow it to obtain land from Maine Yankee at Wiscasset if a suitable site is found there. In the fall of 1992, the Authority signed option agreements with three people who own parts of the area being studied in Pittston.

At their February 1993 meeting, Authority members accepted their consultant's recommendation that they eliminate six sites (including Pittston) from further study, because the sites did not meet previously adopted siting criteria. The Authority would like to choose not more than three sites for the detailed study called site characterization (which may cost \$10 million or more per site). In late 1992, Authority members decided they will need new criteria to choose among sites still on the list. The new criteria will probably be in the form of site selection rules to be adopted according to the Maine Administrative Procedures Act. Drafting the rules and getting them approved will take several months, so it appears likely the Authority will leave the six still-acceptable sites on its list through 1993.

In addition to site selection work, the Authority did several other preliminary steps during 1992. They included:

- ✓ Having state Nuclear Safety Advisor Uldis Vanags do a report on potential waste going into a Maine facility, including Maine Yankee decommissioning waste, to extend the 1989-90 report done by Dr. Constantine Maletskos.

- ✓ Accepting the results of a design study by a University of Maine team, which recommended Maine plan to build an above-ground, building-within-a-building disposal facility.

- ✓ Commissioning the University of Maine to do a study of engineered soils as a means to enhance natural site characteristics and increase a facility's leak-resistance. UMO faculty members delivered a preliminary report at the Authority's Jan. 21, 1993, meeting.

The federal Nuclear Regulatory Commission at first appeared hostile to the idea of an above-ground facility, since federal rules were written with the assumption facilities would be underground. However, after Maine and NRC officials met in early December, the Maine group reported that NRC staff appeared willing to accept the Maine design concept.

In the spring of 1992, the 115th legislature made several changes in the Authority's enabling legislation, including:

- Raising the cap on the facility construction fund from \$10 million to \$12.5 million, adding a \$2.5 million assessment on Maine Yankee due March 1, 1993.



- ☛ Giving the Authority's Citizens' Advisory Group a statutory base, after the Authority's March 1992 decision to end its contract with Endispute, the Massachusetts firm facilitating the CAG, was widely interpreted as abolishing the CAG.

- ☛ Authorizing incentive and impact payments to a host community and spelling out some of the ways the Authority is to measure impacts and set impact payments; and requiring legislative approval of a host community benefits program after local voters have endorsed the facility by the required 60% vote.

- ☛ Adding new provisions on liability and insurance, based on Advisory Commission recommendations.

Maine Yankee provides most of the funding for the Authority's (and the Advisory Commission's) work. State law says:

- ❖ Everyone who generates low-level waste needing disposal (14 entities in both 1990 and 1991) contributes to the fund which pays the Authority's and the Advisory Commission's administrative expenses. Contributions are calculated based half on waste volume and half on curie content (amount of radioactivity).

- ❖ Maine Yankee pays "the full cost of planning, siting, licensing and construction" of an in-state facility, in annual installments that began in 1988. The present \$12.5 million cap on the building fund will probably have to be raised in 1994, if the Authority's siting process continues.

The Advisory Commission continues to monitor Authority activities. Advisory Commission members or staff attend most Authority, Authority committee, and Citizens' Advisory Group meetings, and the Update '92 newsletters regularly included reports on Authority activities.

### C. Advisory Commission Activities

As the Maine Low-level Radioactive Waste Authority's siting process generated controversy and the inevitable resulting barrages of information and propaganda, the Advisory Commission stressed the information side of its mandate during much of 1992. Commission members, especially but not exclusively the legislative members, provided information to the Energy and Natural Resources Committee as it considered low-level waste bills in the spring. The Commission's Update newsletter was published more frequently, and the mailing list continued to acquire new names as residents of areas affected by Authority activities learned of the Commission's role. Some of the Maine residents most closely following Authority activities frequently used the Commission office as a source of documents and current information.

The full Advisory Commission met twice in 1992, in February and July. In July, seven of the 14 Advisory Commission members formed a working group to review impacts of the June 1992 Supreme Court decision on the state low-level waste management program. The group tried several times to discuss the issue with leaders of the House and Senate, but was unable to schedule a meeting.

The February Advisory Commission meeting was devoted to review and discussion of proposed legislation on liability for a low-level waste disposal facility, prepared in response to a 1990 request from the legislature's Joint Standing Committee on the Judiciary. The legislature approved revised liability provisions essentially as recommended by the Advisory Commission.

Since 1990, the Advisory Commission has been following the University of Maine's monitoring program for the closed low-level waste disposal facility at the former state nursery in Greenbush. In November 1992, UMO Vice-President Charles F. Rauch Jr. forwarded a copy of a report on initial tests from monitoring wells

installed in the fall of 1991. The tests showed no evidence that the disposal facility is contaminating the surrounding environment with either radioactivity or chemical elements. Mr. Rauch said the University's consulting engineers had recommended installing four more monitoring wells, work the University would do if funds were available.

Advisory Commission members and staff have continued to review progress toward meeting the federal mandate that Maine provide a way for its generators to dispose of low-level waste. Discussions at Commission meetings have covered pending legislation, Authority activities, federal activities, and negotiations for out-of-state disposal of Maine low-level waste. In 1992, as in 1991, Advisory Commission members approved a transfer of \$15,000 from the Commission's budget to Public Advocate Stephen Ward's budget to help finance his discussions with potential host states.

As in past years, Advisory Commission members and staff attended major national conferences on radioactive waste, including Waste Management '92 and the quarterly meetings of the LLW Forum. The Commission's library continued to serve as a resource for people doing academic research on radioactive waste issues, from elementary-school students to staff from the Office of Policy and Legal Analysis. The toll-free telephone line was used frequently.

#### **D. Commission members/meetings/publications/staff**

Advisory Commission members during 1992 were:

Rep. James Mitchell, Chair  
Environmental Protection Commissioner Dean Marriott, Vice-chair  
Walter Anderson, State Geologist  
Sen. John Baldacci  
Dr. Joseph Blinick, licensee member (Maine Medical Center)  
Rep. Reed Coles  
Theresa S. Hoffman, public member  
Nancy Holland, public member  
Donald Hoxie, Department of Human Services  
Rep. Willis Lord  
Sen. Margaret Ludwig  
Sen. Bonnie Titcomb  
Stephen Ward, Governor's Office  
G. Douglas Whittier, licensee member (Maine Yankee Atomic Power Co.)

Under the law, Commissioner Marriott, Mr. Anderson, and the Commissioner of Human Services (represented by Mr. Hoxie) serve *ex officio*. Mr. Ward serves at the Governor's pleasure. The six legislative members are appointed by the presiding officers of their respective houses for two-year terms; all six terms ended Dec. 2, 1992. The public and licensee members are appointed by the Speaker of the House and President of the Senate on a staggered system. The two whose terms ended Dec. 31, 1992, are Ms. Holland, whose nomination is the Senate President's prerogative, and Dr. Blinick, whose nomination is the House Speaker's prerogative. Mrs. Hoffman, appointed by the Speaker of the House, and Mr. Whittier, appointed by the President of the Senate, serve through 1993, unless either appointing authority exercises his legal right to remove and replace the Commission member he chose.

The Advisory Commission met February 7 and July 17, 1992, in Augusta.

The Commission published 12 issues of its Update '92 newsletter, a combined January-February issue, one each following month, and a special issue in late June summarizing the U. S. Supreme Court decision on the constitutionality of the federal low-level radioactive waste law. The Commission's mailing lists have almost 1,500 names. In addition, copies of the newsletter are distributed in the House and Senate when the legislature is in session.

The Commission updated its set of nine low-level radioactive waste fact sheets, intended to provide general background information for the public. The low-level waste "Backgrounder," written to provide more detailed information for media people and others needing a summary reference document for working with low-level waste issues, is due to be updated in 1993.

Commission staff during 1992 consisted of Robert Demkowicz, Environmental Specialist IV (full-time); Mary Grow, Public Information Specialist (half-time); and Barbara Promisel, secretary (half-time).

## APPENDIX I

**Excerpts from Supreme Court Justice Sandra Day O'Connor's majority opinion in *New York v. United States et al.*, delivered June 19, 1992**

*Background: in 1990, the State of New York and two New York counties challenged the constitutionality of the 1985 Low-level Radioactive Waste Policy Amendments Act. The case was argued before the U. S. Supreme Court in March 1992 and decided June 19. The majority decision found one provision of the act, the so-called take-title provision, unconstitutional, but severable from the rest of the act, which remains in effect. The minority opinion by Justice Byron White, for himself and Justices Blackmun and Stevens, argued that the entire act was constitutional. The excerpts below outline the main thrust of the Court's majority opinion on the three sections of the Low-level Radioactive Waste Policy Amendments Act that were analyzed.*

**The Advisory Commission office has copies of Justice O'Connor's opinion and of the 1985 federal law. Anyone who would like either or both documents may call 287-3059 during office hours or 1-800-453-4013 any time to leave a message on the answering machine.**

*Justice O'Connor wrote:*

This case implicates one of our Nation's newest problems of public policy and perhaps our oldest question of constitutional law. The public policy issue involves the disposal of radioactive waste: In this case, we address the constitutionality of three provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985.... The constitutional question is as old as the Constitution: It consists of discerning the proper division of authority between the Federal Government and the States. We conclude that while Congress has substantial power under the Constitution to encourage the States to provide for the disposal of the radioactive waste generated within their borders, the Constitution does not confer upon Congress the ability simply to compel the States to do so. We therefore find that only two of the Act's three provisions at issue are consistent with the Constitution's allocation of power to the Federal Government. ...

[The opinion summarizes the three types of incentives offered states to encourage them to provide radioactive waste disposal facilities: monetary incentives, paid only to states or regional disposal compacts meeting "milestones" in the act; access incentives, in the form of denial of access to existing disposal facilities for generators from states that fail to meet specified milestones; and the take title provision, which says a state (or compact) that does not provide a disposal facility by Jan. 1, 1996, "upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste...."]

...we must determine whether any of the three challenged provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 oversteps the boundary between federal and state authority. ...

This case concerns the circumstances under which Congress may use the States as implements of regulation; that is, whether Congress may direct or otherwise motivate the States to regulate in a particular field or a particular way. Our cases have established a few principles that guide our resolution of the issue. ...

As an initial matter, Congress may not simply “commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.”... [The drafters of the U. S. Constitution] explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. ...

This is not to say that Congress lacks the ability to encourage a state to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State’s policy choices....

First, under Congress’ spending power, “Congress may attach conditions on the receipt of federal funds.”...

Second, where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress’ power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation....

By either of these two methods, as by any other permissible method of encouraging a State to conform to federal policy choices, the residents of the State retain the ultimate decision as to whether or not the State will comply. If a State’s citizens view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant. If state residents would prefer their government to devote its attention and resources to problems other than those deemed important by Congress, they may choose to have the Federal Government rather than the State bear the expense of a federally mandated regulatory program, and they may continue to supplement that program to the extent state law is not preempted. Where Congress encourages state regulation rather than compelling it, state governments remain responsive to the local electorate’s preferences; state officials remain accountable to the people. ...

The Act’s first series of incentives, in which Congress has conditioned grants to the States upon the States’ attaining a series of milestones, is...well within the authority of Congress under the Commerce and Spending Clauses. Because the first set of incentives is supported by affirmative constitutional grants of power to Congress, it is not inconsistent with the Tenth Amendment. ...

[The second set of incentives gives states a choice:] States may either regulate the disposal of radioactive waste according to federal standards..., or their residents who produce radioactive waste will be subject to federal regulation...[authorizing denial of access to disposal facilities]. The affected States are not compelled by Congress to regulate, because any burden caused by a State’s refusal to regulate will fall on those who generate waste and find no outlet for its disposal, rather than on the State as a sovereign. A State whose citizens do not wish it to attain the Act’s milestones may devote its attention and its resources to issues its citizens deem more worthy; the choice remains at all times with the residents of the State, not with Congress. The State need not expend any funds, or participate in any federal program, if local residents do not view such expenditures or participation as worthwhile....[*Citation omitted*] Nor must the State abandon the field if it does not accede to federal direction; the State may continue to regulate the generation and disposal of radioactive waste in any manner its citizens see fit.

The Act’s second set of incentives thus represents a conditional exercise of Congress’ commerce power, along the lines of those we have held to be within Congress’ authority. As a result, the second set of incentives does not intrude on the sovereignty reserved to the States by the Tenth Amendment. ...

The take title provision is of a different character. This third so-called “incentive” offers States, as an alternative to regulating pursuant to Congress’ direction, the option of taking title to and possession of the low level radioactive waste generated within their borders and becoming liable for all damages waste generators suffer as a result of the States’ failure to do so promptly. In this provision, Congress has crossed the line distinguishing

encouragement from coercion. ...

Because an instruction to state governments to take title to waste, standing alone, would be beyond the authority of Congress, and because a direct order to regulate, standing alone, would also be beyond the authority of Congress, it follows that Congress lacks the power to offer the States a choice between the two. Unlike the first two sets of incentives, the take title incentive does not represent the conditional exercise of any congressional power enumerated in the Constitution....A choice between two unconstitutionally coercive regulatory techniques is no choice at all. ...

The take title provision appears to be unique. No other federal statute has been cited which offers a state government no option other than that of implementing legislation enacted by Congress. Whether one views the take title provision as lying outside Congress' enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision is inconsistent with the federal structure of our Government established by the Constitution. ...

It is apparent...that the take title provision may be severed without doing violence to the rest of the Act. The Act is still operative and it still serves Congress' objective of encouraging the States to attain local or regional self-sufficiency in the disposal of low level radioactive waste. It still includes two incentives that coax the States along this road.... The purpose of the Act is not defeated by the invalidation of the take title provision, so we may leave the remainder of the Act in force. ...

States are not mere political subdivisions of the United States. State governments are neither regional offices nor administrative agencies of the Federal Government.... The Constitution instead "leaves to the several States a residuary and inviolable sovereignty," [citation omitted] reserved explicitly to the States by the Tenth Amendment.

Whatever the outer limits of that sovereignty may be, one thing is clear: the Federal Government may not compel the States to enact or administer a federal regulatory program. The Constitution permits both the Federal Government and the States to enact legislation regarding the disposal of low level radioactive waste. The Constitution enables the Federal Government to pre-empt state regulation contrary to federal interests, and it permits the Federal Government to hold out incentives to the States as a means of encouraging them to adopt suggested regulatory schemes. It does not, however, authorize Congress simply to direct the States to provide for disposal of the radioactive waste generated within their borders. While there may be many constitutional methods of achieving regional self-sufficiency in radioactive waste disposal, the method Congress has chosen is not one of them. The judgment of the Court of Appeals is accordingly

*Affirmed in part and reversed in part.*



## **APPENDIX II**

### **ADVISORY COMMISSION ON RADIOACTIVE WASTE**

**\* \* \* FINANCIAL REPORT \* \* \***

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ADVISORY COMMISSION ON RADIOACTIVE WASTE  
REPORT FOR FISCAL YEAR 1992

REVENUE RECEIVED			FEES INCOME BY GENERATOR - 4536.1		
	FY '91 7/1/90-6/30/91	FY '92 7/1/91-6/30/92		FY '91 7/1/90- 6/30/91	FY '92 7/1/91- 6/30/92
(A) Rad Waste Fund (4536.1,4530.2)					
Total Revenue Received	\$157,960	\$166,022	Maine Yankee	\$151,420	\$156,513
Plus Balance Fwd. from FY 89/90	\$92,346	\$83,978	Jackson Labs	\$1,493	\$1,628
TOTAL REVENUE AVAILABLE	\$250,306	\$250,000	University of Maine	\$1,019	\$2,994
			Foundation for Blood Research	\$387	\$397
EXPENSE BY LINE ITEM: (4536.1&4530.2)			(B)Portsmouth Naval Shipyard	\$0	\$0
Personal Services	\$74,206	\$77,792	Mt. Desert Bio.	\$1,335	\$2,096
Per Diem	\$75	\$100	Amac	\$0	\$300
Consultant Services	\$534	\$6,487	FMC Corp.	\$300	\$0
In-State Travel	\$525	\$312	Champion International	\$0	\$336
Out of State Travel	\$7,523	\$8,125	Bates College	\$0	\$300
Postage	\$3,938	\$4,456	Lincoln Pulp & Paper Co.	\$300	\$0
Printing	\$3,894	\$5,400	Ventrex Lab	\$300	\$300
General Operating	\$13,351	\$6,557	Bigelow Lab for Ocean Sciences	\$466	\$439
Office Supplies	\$161	\$596	IDEXX	\$940	\$719
Rents	\$15,490	\$19,793			
Indirect Cost--State C.A.P.	\$3,698	\$3,952	TOTAL	\$157,960	\$166,022
Capital Expenditures	\$427	\$2,789			
Total Expenses	\$123,822	\$136,359			
Indirect Cost--DI-C.A.P. Journalled	\$27,506	\$21,457			
* * Cash transfer to Public Advocate	\$15,000	\$15,000			
Total Cash Outlays	\$166,328	\$172,816			
TOTAL BALANCES END OF PERIOD:	\$83,978	\$77,184			
<p>**Board approved cash transfers to the Public Advocate's Office for expenditures incurred relating to Low Level Radioactive Waste. (Total transferred to Public Advocate from State Fiscal Years 1989, 1990, 1991 and 1992 (\$15,000) = \$55,000.)</p>			<p>(A) 4536.1=Commission; 4530.2=Tech. Staff Balance shown includes balance forward from prior state fiscal year.</p> <p>(B) Portsmouth Naval Shipyard did not contribute to this fund</p> <p>Prepared by R.W. Fitzmaurice Tel.: 287-2691</p>		

ADVISORY COMMISSION ON RADIOACTIVE WASTE  
REPORT FOR FISCAL YEAR 1992  
6/30/92

Advisory Commission on Radioactive  
Waste-Low & High Level-----014.06A.0426.14

Technical Studies DEP-Low & High Level--014.06A.0262.14

	4536.1		4530.2		ALL ACCOUNTS	
	BUDGETED	EXPENDITURES ACTUAL	BUDGETED	EXPENDITURES ACTUAL	TOTAL BUDGETED	TOTAL ACTUAL
Personal Services	\$2,000	\$100	\$81,266	\$77,792	\$83,266	\$77,892
Prof. Fees-Not State	\$2,000		\$16,700	\$6,436	\$18,700	\$6,436
Prof. Fees-By State		\$51	\$950		\$950	\$51
Travel-In state	\$2,000		\$1,500	\$312	\$3,500	\$312
Travel-Out of State	\$7,000	\$2,040	\$9,400	\$6,085	\$16,400	\$8,125
Utilities	\$2,200	\$1,546	\$1,200	\$1,022	\$3,400	\$2,568
Rents	\$5,815	\$3,293	\$12,604	\$16,500	\$18,419	\$19,793
Gen.Oper.Expense	\$5,300	\$10,678	\$13,296	\$2,904	\$18,596	\$13,582
Office Supplies		\$596	\$1,500		\$1,500	\$596
Other Supplies		\$263	\$1,650		\$1,650	\$263
Indirect Cost(STA-CAP)	\$1,027	\$566	\$6,971	\$3,386	\$7,998	\$3,952
Capital			\$2,789	\$2,789	\$2,789	\$2,789
TOTAL	\$27,342	\$19,133	\$149,826	\$117,226	\$177,168	\$136,359
Indirect Cost(DIE-CAP)		\$2,667		\$15,948		\$18,614
GRAND TOTAL	\$27,342	\$21,800	\$149,826	\$133,174	\$177,168	\$154,973

ADVISORY COMMISSION ON RADIOACTIVE WASTE  
REPORT FOR FISCAL YEAR 1993

REVENUE RECEIVED			FEES INCOME BY GENERATOR - 4536.1		
	FY '92	FY '93		FY '92	FY'93
	7/1/91-6/30/92	7/1/91-9/30/92		7/1/91-6/30/92	7/1/92-9/30/92
(A) Rad Waste Fund (0426, 0262)					
Total Revenue Received	\$166,022	\$49,551	Maine Yankee	\$156,513	\$40,672
Plus Balance Fwd. from FY 91/92	\$83,978	\$77,184	Jackson Labs	\$1,628	\$2,704
<b>TOTAL REVENUE AVAILABLE</b>	<b>\$250,000</b>	<b>\$126,735</b>	University of Maine	\$2,994	\$809
			Foundation for Blood Research	\$397	\$234
<b>EXPENSE BY LINE ITEM: (0426 &amp; 0262)</b>					
			(B) Portsmouth Naval Shipyard	\$0	\$0
Personal Services	\$77,792	\$22,171	Mt. Desert Blo.	\$2,096	\$1,919
Per Diem	\$100	\$50	Amac	\$300	\$0
Consultant Services	\$8,487	\$734	Champlon International	\$336	\$0
In-State Travel	\$312	\$0	Bates College	\$300	\$300
Out of State Travel	\$8,125	\$631	Boise Cascade	\$0	\$300
Postage	\$4,458	\$1,918	Ventrex Lab	\$300	\$348
Printing	\$5,400	\$1,569	Bigelow Lab for Ocean Sciences	\$439	\$0
General Operating	\$6,557	\$1,379	IDEXX	\$719	\$417
Office Supplies	\$596	\$8	A.E. Staley	\$0	\$300
Rents	\$19,793	\$4,939	Great Northern Paper	\$0	\$348
Indirect Cost--State C.A.P.	\$3,952	\$864	Bowdoin College	\$0	\$300
Capital Expenditures	\$2,789	\$0	Colby College	\$0	\$300
			International Paper	\$0	\$300
			S.D. Warren	\$0	\$300
<b>Total Expenses</b>	<b>\$136,359</b>	<b>\$34,263</b>	<b>TOTAL</b>	<b>\$198,649</b>	<b>\$49,551</b>
Indirect Cost--DI-C.A.P. Journalled	\$21,457	\$1,453			
* * Cash transfer to Public Advocate	\$15,000				
<b>Total Cash Outlays</b>	<b>\$172,816</b>	<b>\$35,716</b>			
<b>TOTAL BALANCES END OF PERIOD:</b>	<b>\$77,184</b>	<b>\$91,019</b>			

\*\*Board approved cash transfers to the Public Advocate's Office for expenditures incurred relating to Low Level Radioactive Waste. (Total transferred to Public Advocate from State Fiscal Years 1989, 1990, 1991 and 1992 = \$55,000.)

(A) 4536.1 = Commission; 4530.2 = Tech. Staff Balance shown Includes balance forward from prior state fiscal year.  
(B) Portsmouth Naval Shipyard did not contribute to this fund

Prepared by R.W. Fitzmaurice  
Tel.: 287-2691

ADVISORY COMMISSION ON RADIOACTIVE WASTE  
REPORT FOR FISCAL YEAR 1992  
9/30/92

Advisory Commission on Radioactive  
Waste-Low & High Level-----014.06A.0426.14

Technical Studies DEP-Low & High Level-014.06A.0262.14

	014.06A.0426.14		014.06A.0262.14		ALL ACCOUNTS	
	EXPENDITURES		EXPENDITURES		TOTAL	
	BUDGETED	ACTUAL	BUDGETED	ACTUAL	BUDGETED	ACTUAL
Personal Services	\$2,000	\$50	\$89,114	\$22,171	\$91,114	\$22,221
Prof. Fees-Not State	\$0	\$0	\$6,000	\$734	\$6,000	\$734
Prof. Fees-By State	\$0	\$0	\$3,500	\$0	\$3,500	\$0
Travel-In state	\$2,814	\$0	\$541	\$0	\$3,355	\$0
Travel-Out of State	\$6,472	\$0	\$8,100	\$631	\$14,572	\$631
Utilities	\$2,870	\$813	\$2,200	\$367	\$5,070	\$1,180
Rents	\$3,496	\$0	\$17,286	\$4,939	\$20,782	\$4,939
Gen. Oper. Expense	\$6,152	\$3,635	\$4,962	\$51	\$11,114	\$3,686
Office Supplies	\$800	\$8	\$487	\$0	\$1,287	\$8
Other Supplies	\$0	\$0	\$2,555	\$0	\$2,555	\$0
Indirect Cost(STA-CAP)	\$615	\$117	\$3,402	\$747	\$4,017	\$864
Capital	\$0				\$0	\$0
TOTAL	\$25,219	\$4,623	\$138,147	\$29,640	\$163,366	\$34,263
Indirect Cost(DIE-CAP)		\$640		\$4,110		\$4,750
GRAND TOTAL	\$25,219	\$5,263	\$138,147	\$33,750	\$163,366	\$39,013

ADVISORY COMMISSION ON RADIOACTIVE WASTE  
REPORT FOR FISCAL YEAR 1993

<u>REVENUE RECEIVED</u>			<u>FEES INCOME BY GENERATOR - 4536.1</u>		
	<u>FY '92</u>	<u>FY '93</u>		<u>FY '92</u>	<u>FY '93</u>
	<u>7/1/91-6/30/92</u>	<u>7/1/91-12/31/92</u>		<u>7/1/91-6/30/92</u>	<u>7/1/92-12/31/92</u>
(A) Rad Waste Fund (0426, 0262)					
Total Revenue Received	\$166,022	\$91,080	Maine Yankee	\$156,513	\$81,345
Plus Balance Fwd. from FY 91/92	\$83,978	\$77,184	Jackson Labs	\$1,628	\$2,704
<b>TOTAL REVENUE AVAILABLE</b>	<b>\$250,000</b>	<b>\$168,264</b>	University of Maine	\$2,994	\$809
			Foundation for Blood Research	\$397	\$545
<u>EXPENSE BY LINE ITEM: (0426 &amp; 0262)</u>			(B) Portsmouth Naval Shipyard	\$0	\$0
Personal Services	\$77,792	\$43,295	Mt. Desert Bio.	\$2,096	\$1,919
Per Diem	\$100	\$75	Amac	\$300	\$0
Consultant Services	\$6,487	\$734	Champion International	\$336	\$0
In-State Travel	\$312	\$20	Bates College	\$300	\$300
Out of State Travel	\$8,125	\$2,869	Boise Cascade	\$0	\$300
Postage	\$4,456	\$1,918	Ventrex Lab	\$300	\$348
Printing	\$5,400	\$1,569	Bigelow Lab for Ocean Sciences	\$439	\$545
General Operating	\$6,557	\$4,216	IDEXX	\$719	\$417
Office Supplies	\$596	\$49	A.E. Staley	\$0	\$300
Rents	\$19,793	\$9,878	Great Northern Paper	\$0	\$348
Indirect Cost--State C.A.P.	\$3,952	\$1,670	Bowdoin College	\$0	\$300
Capital Expenditures	\$2,789	\$0	Colby College	\$0	\$300
			International Paper	\$0	\$300
			S.D. Warren	\$0	\$300
<b>Total Expenses</b>	<b>\$136,359</b>	<b>\$66,293</b>	<b>TOTAL</b>	<b>\$198,649</b>	<b>\$91,080</b>
Indirect Cost--DI-C.A.P. Journalled	\$21,457	\$1,453			
<b>* * Cash transfer to Public Advocate</b>	<b>\$15,000</b>				
<b>Total Cash Outlays</b>	<b>\$172,816</b>	<b>\$67,746</b>			
<b>TOTAL BALANCES END OF PERIOD:</b>	<b>\$77,184</b>	<b>\$100,518</b>			

\*\*Board approved cash transfers to the Public Advocate's Office for expenditures incurred relating to Low Level Radioactive Waste. (Total transferred to Public Advocate from State Fiscal Years 1989, 1990, 1991 and 1992 (\$15,000) = \$55,000.)

(A) 4536.1 = Commission; 4530.2 = Tech. Staff Balance shown includes balance forward from prior state fiscal year.  
(B) Portsmouth Naval Shipyard did not contribute to this fund

Prepared by R.W. Fitzmaurice  
Tel.: 287-2691

**ADVISORY COMMISSION ON RADIOACTIVE WASTE**

**REPORT FOR FISCAL YEAR 1992**

12/31/92

Advisory Commission on Radioactive

Waste-Low & High Level-----014.06A.0426.14

Technical Studies DEP-Low & High Level-014.06A.0262.14

	<b>014.06A.0426.14</b>		<b>014.06A.0262.14</b>		<b>ALL ACCOUNTS</b>	
	<b>EXPENDITURES</b>		<b>EXPENDITURES</b>		<b>TOTAL</b>	
	<b>BUDGETED</b>	<b>ACTUAL</b>	<b>BUDGETED</b>	<b>ACTUAL</b>	<b>BUDGETED</b>	<b>ACTUAL</b>
Personal Services	\$2,000	\$75	\$89,114	\$43,295	\$91,114	\$43,370
Prof. Fees-Not State	\$0	\$0	\$6,000	\$734	\$6,000	\$734
Prof. Fees-By State	\$0	\$0	\$3,500	\$0	\$3,500	\$0
Travel-In state	\$2,814	\$0	\$541	\$20	\$3,355	\$20
Travel-Out of State	\$6,472	\$0	\$8,100	\$2,869	\$14,572	\$2,869
Utilities	\$2,870	\$1,258	\$2,200	\$579	\$5,070	\$1,837
Rents	\$3,496	\$0	\$17,286	\$9,878	\$20,782	\$9,878
Gen. Oper. Expense	\$6,152	\$5,707	\$4,962	\$152	\$11,114	\$5,859
Office Supplies	\$800	\$49	\$487	\$0	\$1,287	\$49
Other Supplies	\$0	\$7	\$2,555	\$0	\$2,555	\$7
Indirect Cost(STA-CAP)	\$615	\$183	\$3,402	\$1,487	\$4,017	\$1,670
Capital	\$0				\$0	\$0
<b>TOTAL</b>	<b>\$25,219</b>	<b>\$7,279</b>	<b>\$138,147</b>	<b>\$59,014</b>	<b>\$163,366</b>	<b>\$66,293</b>
Indirect Cost(DIE-CAP)		\$1,010		\$8,183		\$9,193
<b>GRAND TOTAL</b>	<b>\$25,219</b>	<b>\$8,289</b>	<b>\$138,147</b>	<b>\$67,197</b>	<b>\$163,366</b>	<b>\$75,486</b>

**ADVISORY COMMISSION ON RADIOACTIVE WASTE  
BUDGET FOR FISCAL YEAR 1994  
EXPENDITURES**

**Advisory Commission on Radioactive**

**Waste-Low & High Level-----014.06A.0426.14 (4536.1)**

**Technical Studies DEP-Low & High Level-014.06A.0262.14 (4530.2)**

	4536.1	4530.2	BUDGET '93
Personal Services	\$2,000	\$93,908	\$95,908
			\$0
Prof. Fees-Not State	\$0	\$6,000	\$6,000
Prof. Fees-By State	\$0	\$3,500	\$3,500
Travel-In state	\$2,814	\$541	\$3,355
Travel-Out of State	\$6,472	\$8,100	\$14,572
Utilities	\$2,870	\$2,200	\$5,070
Rents	\$3,496	\$17,286	\$20,782
Gen. Oper. Expense	\$6,152	\$4,962	\$11,114
Office Supplies	\$800	\$487	\$1,287
Other Supplies	\$0	\$2,555	\$2,555
Indirect Cost(STA-CAP)	\$615	\$3,488	\$4,103
Capital	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$25,219</b>	<b>\$143,027</b>	<b>\$168,246</b>
Indirect Cost(DIE-CAP)	\$2,133	\$19,969	\$22,101
<b>GRAND TOTAL</b>	<b>\$27,352</b>	<b>\$162,996</b>	<b>\$190,347</b>