

Frequently Asked Questions on LD 2027

WHY ARE GASEOUS RADIONUCLIDE EMISSIONS FROM THE SPENT NUCLEAR FUEL NOT A SERIOUS AIR POLLUTION THREAT?

The first line of defense against emissions of radionuclides from the irradiated nuclear fuel is the cladding that surrounds each fuel rod. There are a very limited number of rods with broken cladding, but even these no longer posed a threat of air pollution by the time the fuel was moved into dry storage because of regulations imposed by the US Nuclear Regulatory Commission (“NRC”).

The NRC requires spent fuel to first sit in a wet storage pool for five years prior to being moved into the dry cask storage environment. The only radionuclides that might have escaped from the fuel cladding in gaseous form have already been emitted over that time period, and processed with the pool water. In fact, Maine Yankee’s spent fuel sat in the pool for a minimum of six years before being moved. By the time the fuel was moved into these dry storage canisters in the 2003-2005 time frame, there were no gaseous radionuclides left to create any “air pollution”. The canisters are welded shut in order to contain the helium gas that is key to managing the heat emitted by the irradiated fuel rods.

Maine Yankee posits that the type of nuclear disaster that would occur if the radiation decay heat were not managed thus allowing the spent nuclear fuel to reach a state of criticality is analogous to an air pollution event. But such an event is really a nuclear melt down and preventing such a catastrophe is clearly beyond the scope of what any reasonable person would construe as being “primarily for air pollution control.”

Source: Affidavits of Marvin Resnikoff (nuclear physicist), David Schlissel (nuclear engineer), and Peter Bradford (former Nuclear Regulatory Commission commissioner) submitted in the current DEP proceeding. The NRC itself, explaining why there are no conditions for any radionuclide release from an ISFSI, stated: “The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and **are not readily dispersible**. The short-lived volatile nuclides, such as I-131, are **no longer present in aged spent fuel stored in an ISFSI...**” (68 Fed. Reg. 54143, 54157 (Sept. 16, 2003) (emphasis added)).

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DOESN'T THE STATE REIMBURSE TOWNS FOR LOST REVENUE?

The State reimbursement to municipalities for 50% of the tax revenue lost due to tax exemptions is inapplicable because the air pollution control exemption law that is the subject of LD 2027 was enacted in 1971. The reimbursement statute only applies as to tax exemptions that were enacted after April 1, 1978.

The language of the Maine Constitution, Article IV, Part 3, Section 23 reads in full:

“The Legislature shall annually reimburse each municipality from state tax sources for not less than 50% of the property tax revenue loss suffered by that municipality during the previous calendar year because of the statutory property tax exemptions or credits enacted after April 1, 1978. The Legislatures shall enact appropriate legislation to carry out the intent of this section.

This section shall allow, but not require, reimbursement for statutory property tax exemptions or credits for unextracted minerals.”

A copy of the enacted reimbursement statute, 36 MRS § 661, is attached.

Source: Maine Constitution, Article IV, Part 3, Section 23; P.L. 1971, ch. 524, § 2 (enacting air pollution exemption from real and personal property taxes); 36 MRS § 661 (reimbursement statute).

Title 36: TAXATION
Part 2: PROPERTY TAXES
Chapter 105: CITIES AND TOWNS
Subchapter 4: EXEMPTIONS

§661. Reimbursement for exemptions

As required by the Constitution of Maine, Article IV, Part 3, Section 23, the Treasurer of State shall reimburse each municipality 50% of the property tax revenue loss suffered by that municipality during the previous calendar year as a result of statutory property tax exemptions or credits enacted after April 1, 1978. The property tax revenue loss shall be determined pursuant to the following procedure. [PL 1981, c. 133, §5 (NEW).]

1. Filing claim. If a municipality suffers property tax revenue loss as a result of exemptions and credits enacted after April 1, 1978, it may file a claim for reimbursement by November 1st of the following year with the State Tax Assessor on the form prescribed by the State Tax Assessor in [section 383 \(../36/title36sec383.html\)](#). The form shall contain the following information:

A. The total amount of property taxes levied by the municipality in the previous calendar year; [PL 1981, c. 133, §5 (NEW).]

B. The valuation of the property taxed by the municipality which resulted in [paragraph A \(../36/title36sec661.html\)](#); and [PL 1981, c. 133, §5 (NEW).]

C. The valuation of the property which is exempt as a result of exemptions and credits enacted after April 1, 1978. [PL 1981, c. 133, §5 (NEW).]

[PL 1981, c. 133, §5 (NEW).]

2. Valuation. The State Tax Assessor shall add the valuation as determined in [subsection 1, paragraph B \(../36/title36sec661.html\)](#), to the valuation as determined in [subsection 1, paragraph C \(../36/title36sec661.html\)](#), and divide the sum into the figure determined in [subsection 1, paragraph A \(../36/title36sec661.html\)](#).

[PL 1981, c. 133, §5 (NEW).]

3. Amount of tax revenue loss. The State Tax Assessor shall apply the rate in [subsection 2 \(../36/title36sec661.html\)](#) to the valuation of the exempt property to determine the amount of tax revenue loss.

[PL 1981, c. 133, §5 (NEW).]

4. Payment. The Treasurer of State shall pay to the municipality 50% of the property tax revenue loss by December 15th of the year following the year in which property tax revenue was lost by the municipality.

[PL 1981, c. 133, §5 (NEW).]

5. Unorganized territory. The unorganized territory shall be entitled to reimbursement under this section in the same manner provided by this section for municipalities. The amount of reimbursement due shall be paid into the Unorganized Territory Education and Services Fund established in [chapter 115 \(../36/title36ch115sec0.html\)](#).

[PL 1985, c. 459, Pt. B, §4 (NEW).]

6. Audits; determinations of bureau. The bureau may audit the records of a municipality to ensure compliance with this subchapter. The bureau may independently review the records of a municipality to determine if exemptions subject to reimbursement under this section have been properly approved. If the bureau determines that an exemption was improperly approved, the bureau shall ensure, either by setoff against other payments due the municipality or otherwise, that the municipality is not reimbursed for the exemption. A municipality that is aggrieved by a determination of the bureau under this section may appeal pursuant to [section 151 \(../36/title36sec151.html\)](#).

[PL 2021, c. 181, Pt. C, §4 (NEW).]

SECTION HISTORY

PL 1981, c. 133, §5 (NEW). PL 1981, c. 523, §2 (AMD). PL 1985, c. 459, §B4 (AMD). PL 2021, c. 181, Pt. C, §4 (AMD).

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If you need legal advice, please consult a qualified attorney.

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WASN'T THIS FACILITY PREVIOUSLY CERTIFIED?

In spring 2000, Maine Yankee first got a sales tax exemption for this equipment. In its cover letter mailing the required public notice to abutters, Maine Yankee stated **“This exemption request is not related to and has no bearing on the property taxes Maine Yankee pays to the Town of Wiscasset.”** So of course no one from the Town participated in that proceeding and the DEP ended up certifying about 90% of the facility as tax exempt under that air pollution control statute. A mere 3 years later, Maine Yankee sought exemption under the real estate and property tax statutes and argued that their prior sales tax certification should be controlling. That application was withdrawn as part of a global settlement between Maine Yankee and the Town that governed valuation of Maine Yankee’s property for the next two decades.

Once the settlement period concluded in 2022, Maine Yankee again sought tax exemption, claiming that its 64 Transportable Storage Canisters and Vertical Concrete Casks and the concrete pads on which they sit should be certified as “primarily for industrial air pollution control.” The DEP agreed, and the decision is currently on appeal in Lincoln County Superior Court.

It may be that Maine Revenue Service and the Legislature will want to also update the sales tax statute’s air pollution control exemption which has similar, though not precisely the same language. However any such amendment need not happen on an emergency basis because the core components of the ISFSI are not anticipated to be replaced in the near term.

Source: March 1, 2000 cover letter from Maine Yankee to 34 town residents (abutters) and the Wiscasset Town Clerk regarding sales tax exemption application; public proceedings before the DEP in 2003 (A-82-75-O-X) and 2022 (A-1166-75-A-X); 36 MRS § 1760(30) (sales tax air pollution exemption).