



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

**To:** Board of Environmental Protection

**From:** Lynn Muzzey, Bureau of Air Quality

**Date:** October 19, 2023

**Re:** Appeal of Maine Yankee Atomic Power Company Department Order A-1166-75-A-X by the Town of Wiscasset

Statutory and Regulatory References: The applicable statutes and rules governing the appeal of the Department of Environmental Protection (Department) Order issued to Maine Yankee Atomic Power Company (Maine Yankee) are 36 M.R.S. §§ 655(1)(N) and 656(1)(E)(2). Procedural rules governing appeals of Commissioner decisions are found in the Department's *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2, § 24.

Location: Wiscasset; Lincoln County

Project Description and Procedural History: Maine Yankee owns and operates in the town of Wiscasset in Lincoln County, Maine, an interim storage facility for high-level waste including spent nuclear fuel and Greater than Class C waste as defined by the Nuclear Regulatory Commission.

On November 10, 2022, Maine Yankee filed with the Department an application seeking property tax exemption for specific components of their Independent Spent Fuel Storage Installation. After review of the application and comments from interested persons, the Department issued a draft order on March 1, 2023, that was sent to Maine Yankee and the Town of Wiscasset (Appellant). The Department reviewed the comments submitted in response to the draft order and subsequently approved the application in the Department Order A-1166-75-A-X dated March 31, 2023.

On April 28, 2023, the Appellant filed with the Board of Environmental Protection (Board) a timely appeal of the Department Order. The Appellant did not request a hearing before the Board.

On May 10, 2023, the Board acknowledged receipt of the appeal and identified materials contained in it that constituted proposed supplemental evidence for which a ruling on

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

admissibility by the Board Chair is required pursuant to 06-096 C.M.R. ch. 2, § 24(C)(3). Also on May 10, 2023, the Appellant filed with the Board a request to reconsider the Board's characterization of some of those materials, and on May 22, 2023, the Board Chair issued a ruling regarding those reconsiderations.

On June 6, 2023, Maine Yankee filed with the Board comments on the admissibility of the Appellant's proposed supplemental evidence, and on June 16, 2023, the Board Chair ruled on the admissibility of all proposed supplemental evidence. No supplemental evidence was admitted.

On July 6, 2023, Maine Yankee filed with the Board a written response to the merits of the appeal. By letter dated August 22, 2023, the Board Chair identified that Maine Yankee's response contained statements and references to documents that, while referenced in record materials associated with the Property Tax Exemption Certification Order of March 31, 2023, were not submitted to the Department and are not in the administrative record for the 2023 Property Tax Exemption Certification Order. Consequently, the Board Chair ruled that those statements and references that are outside of the record in this matter are not admitted and were stricken from Maine Yankee's response.

Issues Raised by the Appellants and Remedy Requested: The Appellant challenges the Department's conclusions in granting the tax exemption certification in the following ways:

1. The Appellant argues that the Department failed to apply the test of the exemption statute to each of the three components of the ISFSI independently.
2. The Appellant argues that the Department failed to accurately determine the "primary purpose" for which Maine Yankee installed the TSCs, including failing to identify all of the multiple functions for which the equipment was installed.
3. The Appellant argues that the Department erroneously interpreted the definition of "industrial air pollutants."

The Appellant requests that the Board reverse the Department's decision and deny Maine Yankee's tax exemption certification request for all components of the ISFSI.

Department Recommendation: Department staff recommend that the Board affirm the Commissioner's decision approving the tax exemption certification for the reasons laid out in the accompanying proposed Board Order.

Estimated time of agenda item: 1.5 hours