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Waste ruling hits Portsmouth yard

PORTLAND (AP) — Officials at Portsmouth Naval Shipyard are withholding comment on a federal magistrate's ruling that permits Maine to impose penalties on the Kittery installation for violating hazardous waste regulations.

But Assistant U.S. Attorney Mary Beth Ward indicated that the Navy plans to appeal the ruling handed down earlier this month by U.S. Magistrate D. Brock Hornby.

Hornby ruled that Maine may fine the shipyard up to \$25,000 a day for violating state hazardous waste laws, despite the Navy's claim that the facility is exempt from state regulations under the doctrine of sovereign immunity.

The Kittery shipyard, which overhauls nuclear-powered submarines, is the largest generator of hazardous waste in Maine and has one of the most contaminated landfills, environmental officials say.

If the ruling withstands an appeal to U.S. District Judge Gene Carter and to federal appeals courts, it could set a national precedent and be cited in similar cases in Maine and at least three other states, said David Cheever, a spokesman for the Maine Attorney General's Office.

Currently, Ohio, Colorado and California are fighting similar legal battles to force federal polluters to clean up hazardous waste dumps. Maine's victory is the first in that legal battleground for state control over federal polluters.

The decision could force all federal generators of hazardous waste in Maine, including Brunswick Naval Air Station and Loring Air Force Base, to adhere to state-mandated hazardous waste regulations, clean-up plans and penalties.

Colorado state officials welcomed Hornby's decision on Tuesday. They are attempting to force the Pentagon to clean up the 26-square-mile Rocky Mountain Arsenal in Denver, considered the most contaminated site in the nation.

Like Maine, Colorado contends that states should be able to levy civil penalties on federal agencies to force hazardous waste clean-up and compliance with regulations.

"Federal facilities are the most

recalcitrant facilities out there in terms of complying with environmental laws," said Colorado Assistant Attorney General Daniel S. Miller. "I think this is a great decision."

Maine has struggled for years to force the Navy to adhere to hazardous waste regulations at the Kittery shipyard and clean up its Jamaica Island landfill, which is situated on tidal flats and is filled with toxic chemicals, PCBs and battery acids.

Last year, Maine sued the Navy, as operator of the Kittery shipyard, for violating hazardous waste laws and failing to contribute to Maine's toxic waste clean-up fund.

The shipyard claimed it was exempt from state penalties because of its federal status. The U.S. Environmental Protection Agency has limited power to pressure a fellow federal agency to comply with waste regulations because it cannot fine or sue such agencies.

In his decision, Hornby lamented the vagueness of the federal Resource Conservation and Recovery Act in determining whether a state can assess civil penalties against the federal government.

"In short, the court is confronted with a picture of wholesale confusion," Hornby wrote in his 22-page decision. However, he decided that the act did allow states to impose civil penalties for hazardous waste violations.