

MAINE STATE LEGISLATURE

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L.D. 1629

(Filing No. S- 276)

STATE OF MAINE
SENATE
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 625, L.D. 1629, Bill, "An Act Relating to Unavoidable Equipment Malfunctions"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 38 MRSA §349, sub-§9 is enacted to read:

9. Unavoidable malfunctions. The commissioner may exempt from civil penalty an air emission or a wastewater discharge in excess of license limitations if the emission or discharge results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge or emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee shall notify the commissioner in writing within 48 hours. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters with regard to the exercise of this authority.

Sec. 2. 38 MRSA §414-A, sub-§4 is enacted to read:

4. License conditions affecting bypasses. In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility and otherwise

2 subject to applicable effluent limitations and standards. When
3 the applicant demonstrates to the department that, consistent
4 with best practical treatment requirements and other applicable
5 standards, reasonably controlled and infrequent bypasses will be
6 necessary for this purpose, the department may fashion
7 appropriate license allowances and conditions.

8 **Sec. 3. 38 MRSA §590**, as affected by PL 1989, c. 890, Pt. A,
9 §40 and amended by Pt. B, §164, is further amended by adding at
10 the end a new paragraph to read:

12 In fashioning license decisions and conditions, the
13 department shall consider the extent to which operation of the
14 licensed facility requires an allowance for excess emissions
15 during cold start-ups and planned shutdowns of the facility, as
16 long as that facility is operated to minimize emissions and is
17 otherwise subject to applicable standards. When the applicant
18 demonstrates to the department that, consistent with best
19 practical treatment requirements and other applicable standards,
20 infrequent emissions are unavoidable during these periods, the
21 department may fashion appropriate license allowances and
22 conditions.'

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26 **STATEMENT OF FACT**

28 The purpose of this amendment is to allow for reasonable
29 flexibility in the environmental licensing and enforcement
30 process with respect to unavoidable equipment malfunctions,
31 necessary wastewater bypasses and excess air emissions occurring
32 during plant start-ups and shutdowns that result in technical
33 violations of the State's air or water pollution control laws.
34 This amendment is carefully and narrowly drawn to allow for that
35 flexibility at the administrative level while preserving the
36 State's right to enforce these laws as necessary to protect
37 Maine's environment.

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Reported by SENator Titcomb for the Committee on Energy and
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