MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib



Reproduced from scanned originals with text recognition applied (searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1629

S.P. 625

In Senate, April 24, 1991

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator VOSE of Washington Cosponsored by Senator LUDWIG of Aroostook, Representative FARREN of Cherryfield and Representative TAMMARO of Baileyville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act Relating to Unavoidable Equipment Malfunctions.



	Sec. 1. 38 MRSA §361-A, sub-§1-I is enacted to read:
4	1-I. Bypass. "Bypass" means the intentional diversion of
6	waste streams from any portion of a treatment facility.
8	Sec. 2. 38 MRSA §361-A, sub-§6-A is enacted to read:
10	6-A. Upset. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with
12	technology-based license effluent limitations because of factors beyond the reasonable control of the licensee. An upset does not
14	include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive
16	maintenance or careless or improper operation.
18	Sec. 3. 38 MRSA §414, sub-§§5-A and 5-B is enacted to read:
20	5-A. Bypasses. The licensee may allow any bypass to occur that does not cause effluent limitations contained in the license
22	to be exceeded, but only if it is necessary to ensure efficient
24	operation or prevent damage to equipment.
26	5-B. Upsets. A licensee is not subject to penalty for discharge in excess of technology-based license effluent
	limitations if the excessive discharge was caused by an upset and
28	the licensee demonstrates that:
30	A. The upset occurred and the licensee can identify the
	A. The upset occurred and the licensee can identify the cause or causes of the upset;
30	A. The upset occurred and the licensee can identify the
30 32	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those
30 32 34	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the
30 32 34 36	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the department; and
30 32 34 36 38	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the
30 32 34 36 38 40	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the department; and D. The licensee took all reasonable steps to minimize or prevent any discharge in excess of license limits. Sec. 4. 38 MRSA §598, sub-§3, ¶E, as enacted by PL 1979, c.
30 32 34 36 38 40 42	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the department; and D. The licensee took all reasonable steps to minimize or prevent any discharge in excess of license limits. Sec. 4. 38 MRSA §598, sub-§3, ¶E, as enacted by PL 1979, c. 718, §6, is repealed.
30 32 34 36 38 40 42 44	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the department; and D. The licensee took all reasonable steps to minimize or prevent any discharge in excess of license limits. Sec. 4. 38 MRSA §598, sub-§3, ¶E, as enacted by PL 1979, c.
30 32 34 36 38 40 42 44	A. The upset occurred and the licensee can identify the cause or causes of the upset; B. The licensed facility was being properly operated at the time of the upset; C. The licensee provided oral notice of exceeding those limitations within 24 hours to the department and a follow-up written notice within 5 working days to the department; and D. The licensee took all reasonable steps to minimize or prevent any discharge in excess of license limits. Sec. 4. 38 MRSA §598, sub-§3, ¶E, as enacted by PL 1979, c. 718, §6, is repealed. Sec. 5. 38 MRSA §598, sub-§4, as affected by PL 1989, c. 890,

Be it enacted by the People of the State of Maine as follows:

§605. Malfunctions

- 1. Notice. Any person owning or operating any emission source that suffers a malfunction or breakdown in any component part and that malfunction or breakdown causes a violation of any emission standards shall notify the commissioner in writing within 48 hours.
 - 2. Exemptions from civil penalty. The following are exempt from civil penalty pursuant to section 349, subsection 2:
 - A. Emissions occurring during periods of start-up, shutdown and unavoidable malfunction as long as the excess emission was not caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition as long as records are available to demonstrate that the facility was being operated to minimize emissions;
 - B. Excess emissions that occur during periods other than start-up, shutdown and unavoidable malfunction to the extent that the emissions do not exceed 2% of source operating time as long as the excess emission was not caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition, provided records are available to demonstrate that the facility was being operated to minimize emissions and the excess emission does not cause or contribute to a violation of ambient air quality standards; and
 - C. Monitoring equipment downtime or malfunctions as long as the failure was not caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition.

STATEMENT OF FACT

Due to technological limitations, waste water treatment facilities and air emission sources, no matter how well designed, maintained and operated, occasionally malfunction and allow emissions that exceed applicable license limits. Owners and operators of waste water treatment facilities and air emission sources can not reasonably avoid all emissions that exceed those limits. Recognizing this, federal regulations provide that certain waste water facility bypasses and upsets are not subject to penalty. Furthermore, federal regulations covering new air emission sources exempt excessive air emission occurring during cold start-up, shutdown and malfunction from civil penalties.

This bill makes Maine law consistent with federal law by providing that owners and operators of the facilities are not subject to penalty for unavoidable equipment malfunctions or, with respect to air emission sources, for excess emissions during cold start-up and shutdown as long as all reasonable steps have been taken to prevent the malfunction to minimize the discharge or emission. Because excess emissions may also be unavoidable due to causes other than start-up, shutdown or malfunction, such 10 as process fluctuations, an exception is also granted for a fraction of those excess emissions as long as they could not have 12 been reasonably avoided.

8