

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1218

(Filing No. H-261)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1218, Bill, "An Act Related 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, as enacted by PL 1991, c. 483, §1, is amended 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 occurs during start-up or shutdown or 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, as enacted by PL 1991, c. 483, §2, is amended to read:

COMMITTEE AMENDMENT

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

Sec. 3. 38 MRSA §590, sub-§5, as enacted by PL 1991, c. 658, §1, is amended to read:

5. **License conditions for start-up, shutdown and malfunctions.** In making license decisions and conditions, the department shall consider the extent to which operation of the licensed facility requires an allowance for excess emissions during cold start-ups and shutdowns of the facility as long as that facility is operated to minimize emissions and is otherwise subject to applicable standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, infrequent emissions are unavoidable during these periods, the department may shall establish appropriate license allowances and conditions.

FISCAL NOTE

The exemption from civil penalties for violations of certain air emission standards may reduce General Fund revenues by a minor amount.

The Department of Environmental Protection will incur some minor additional costs to fashion appropriate allowances and conditions for certain licenses. These costs can be absorbed within the department's existing budgeted resources.'

STATEMENT OF FACT

This amendment grants the Commissioner of Environmental Protection the discretionary authority to exempt from civil penalty an air emission or wastewater discharge that is in excess of a license limitation if the emission or discharge occurs during start-up or shutdown of equipment. Existing law already grants such discretionary authority to the commissioner for emissions or discharges that occur during unavoidable malfunctions.

2 By striking the word "may" and inserting the word "shall" in
the Maine Revised Statutes, Title 38, section 414-A, subsection
4, the amendment requires, rather than allows, the Commissioner
of Environmental Protection to fashion license conditions that
6 allow reasonably controlled and infrequent bypasses at treatment
facilities if an applicant demonstrates to the department that
8 such bypasses are necessary for essential maintenance to ensure
efficient operation of the plant.

10 By striking the word "may" and inserting the word "shall" in
12 Title 38, section 590, subsection 5, the amendment requires,
rather than allows, the Commissioner of Environmental Protection
14 to fashion license conditions that allow infrequent excess
emissions during cold start-up and planned shutdown of facilities
16 if an applicant demonstrates to the department that such
emissions are unavoidable during those periods.
18

Reported by the Committee on Energy and Natural Resources
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