



# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

Legislative Document

CIANCHETTE of Somerset.

No. 1218

H.P. 903

House of Representatives, April 8, 1993

### An Act Related to Unavoidable Equipment Malfunctions.

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

✔JOSEPH W. MAYO, Clerk

Presented by Representative LORD of Waterboro. Cosponsored by Representatives: ANDERSON of Woodland, CLARK of Millinocket, CONSTANTINE of Bar Harbor, GOULD of Greenville, HEINO of Boothbay, HUSSEY of Milo, JACQUES of Waterville, MORRISON of Bangor, POULIN of Oakland, Senator:

_	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 38 MRSA §361-A, sub-§§1-I and 6-A are enacted to read:
4	1-I. Bypass. "Bypass" means the intentional diversion of
6	waste streams from any portion of a treatment facility.
8	<u>6-A. Upset. "Upset" means an exceptional incident in which</u> there is unintentional and temporary noncompliance with
10	technology-based licensed effluent limitations because of factors beyond the reasonable control of the licensee. An upset does not
12	include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive
14	maintenance or careless or improper operation.
16	Sec. 2. 38 MRSA §414, sub-§§7 and 8 are enacted to read:
18	<b>7. Bypasses.</b> The licensee may allow any bypass to occur that does not cause effluent limitations contained in the license
20	to be exceeded, but only if it is necessary to ensure efficient operation or prevent damage to equipment.
22	<b>8. Upsets.</b> A licensee is not subject to penalty for
24	discharge in excess of technology-based license effluent limitations if the excessive discharge was caused by an upset and
26	the licensee demonstrates that:
28	A. The upset occurred and the licensee can identify the cause or causes of the upset;
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32	B. The licensed facility was being properly operated at the time of the upset;
34	<u>C. The licensee provided oral notice of exceeding those limitations within 24 house to the department and a</u>
36	<u>follow-up written notice within 5 working days to the</u> <u>department; and</u>
38	D. The licensee took all reasonable steps to minimize or
40	prevent any discharge in excess of license limits.
42	Sec. 3. 38 MRSA §414-A, sub-§4, as enacted by PL 1991, c. 483, §2, is repealed.
44	Sec. 4. 38 MRSA §590, sub-§5, as enacted by PL 1991, c. 658,
46	\$1, is repealed.
48	Sec. 5. 38 MIRSA §605, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §174, is repealed and the following
50	s40 and amended by Pt. B, S1/4, is repeated and the following enacted in its place:

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#### §605. Malfunctions 2

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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 within 48 hours.

2. Exemptions from civil penalty. The following are exempt from civil penalty pursuant to section 349, subsection 2:

12 A. Emissions occurring during periods of start-up, shutdown and unavoidable malfunction provided the excess emission was not caused, entirely or in part, by poor maintenance, 14 careless operation, poor design or any other reasonably preventable condition and records are available to demonstrate that the facility was being operated to minimize emissions; and 18

B. Excess opacity emissions that occur during periods other than start-up, shutdown and unavoidable malfunction to the extent the emissions do not exceed 6% of source operating time provided the excess emissions were not caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition and records are available to demonstrate that the facility was being operated to minimize emissions.

#### STATEMENT OF FACT

32 Due to technological limitations, wastewater treatment facilities and air emission sources occasionally malfunction and 34 allow emissions that exceed applicable license limits. Recognizing this, federal regulations provide that certain 36 wastewater facility bypasses and upsets are not subject to penalty. Furthermore, federal regulations covering new air emission sources effectively exempt air emissions occurring during start-up, shutdown and malfunction.

Consistent with federal regulations, this bill provides that owners and operators of affected facilities are not subject to penalty for unavoidable equipment malfunctions, whether or not emission or discharge limits are exceeded nor, with respect to air emission sources, for excess emissions during start-up and shutdown as long as reasonable steps have been taken to prevent the malfunction to minimize the discharge or emission.