

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

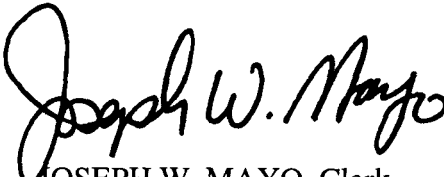
No. 474

H.P. 354

House of Representatives, February 9, 1995

An Act Relating to Equipment Start-up, Shutdown and Unavoidable Malfunction.

Received by the Clerk of the House on February 7, 1995. Referred to the Committee on Natural Resources and ordered printed pursuant to Joint Rule 14.


JOSEPH W. MAYO, Clerk

Presented by Representative POULIN of Oakland.
Cosponsored by Representatives: BUNKER of Kossuth Township, CAMERON of Rumford, CLARK of Millinocket, DAMREN of Belgrade, DiPIETRO of South Portland, GOULD of Greenville, PERKINS of Penobscot, ROSEBUSH of East Millinocket, WATSON of Farmingdale, Senators: CAREY of Kennebec, CASSIDY of Washington, FERGUSON of Oxford, LORD of York, MICHAUD of Penobscot.

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

Sec. 1. 38 MRSA §349, sub-§9, as amended by PL 1993, c. 232, §1, is further 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 orally within 48 hours and in writing within 5 days of the malfunction. The department shall respond to a licensee's request for exemption under this subsection within 30 days of receipt of the request, unless the department requests in writing that the licensee submit additional information necessary to a decision. If the department requests additional information, the 30-day time period runs from the date the department receives the requested additional information. The department's response to requests for exemption under this subsection must contain an explanation that is sufficiently detailed to give the licensee an understanding of the basis for the decision. A dispute between department staff and a licensee with respect to a request for exemption under this subsection must be resolved by the commissioner pursuant to section 342, subsection 1-A. A licensee aggrieved by a decision of the commissioner under this subsection may appeal that decision to the board. Judicial appeal from decisions of the board is as provided in section 346. 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.

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STATEMENT OF FACT

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The Maine Revised Statutes, Title 38, section 349, subsection 9 authorizes the Commissioner of Environmental Protection to exempt from penalty air emissions and wastewater discharges in excess of license limitations if the emission or discharge occurs during start-up or shutdown or results from an unavoidable equipment malfunction.

2 This bill amends existing law to provide that disputes
3 between department staff and licensees with respect to the
4 applicability of the exemption provided under this subsection are
5 resolved by the commissioner pursuant to Title 38, section 342,
6 subsection 1-A.

7 The commissioner shall respond to licensees' requests for
8 exemption under this provision within 30 days and in sufficient
9 detail to provide the licensee with the basis for the
10 commissioner's decision.

11 Licensees may appeal decisions of the commissioner to the
12 Board of Environmental Protection and to Superior Court.