

Report to the 121st Maine Legislature

Unavoidable Malfunctions of Wastewater Discharges

**Joint Standing Committee on Natural Resources
Senator John L. Martin, Chair
Representative Theodore Koffman, Chair**

Prepared by the:

**Department of Environmental Protection
Bureau of Land and Water Quality**

March 28, 2003

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38 M.R.S.A. § 349.9.B requires that the commissioner of the Department of Environmental Protection report annually to the Joint Standing Committee on Natural Resources on the exercise of the authority granted in 38 M.R.S.A. § 349.9.B which states, “An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the malfunction is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation. The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.”

The Department of Environmental Protection did not exercise the authority granted in 38 M.R.S.A. § 349.9.B during calendar year 2002 as no discharger sought to establish an affirmative defense under this provision for a wastewater discharge in excess of license limitations.