



128th MAINE LEGISLATURE

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Legislative Document

No. 1808

H.P. 1254

House of Representatives, January 29, 2018

**An Act To Implement Recommendations Resulting from a State
Government Evaluation Act Review of the Department of
Environmental Protection by the Joint Standing Committee on
Environment and Natural Resources**

Reported by Representative TUCKER of Brunswick for the Joint Standing Committee on Environment and Natural Resources pursuant to the Maine Revised Statutes, Title 3, section 955, subsection 4.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 38 MRSA §349, sub-§2-A**, as enacted by PL 1997, c. 570, §1, is amended
3 to read:

4 **2-A. Supplemental environmental projects.** In settling a civil enforcement action
5 for any violation of any of the provisions of the laws administered by the department,
6 including, without limitation, a violation of the terms or conditions of any order, rule,
7 license, permit, approval or decision of the board or commissioner, the parties may agree
8 to a supplemental environmental project that mitigates ~~not more than 80%~~ up to 100% of
9 the assessed penalty. "Supplemental environmental project" means an environmentally
10 beneficial project primarily benefiting public health or the environment that a violator is
11 not otherwise required or likely to perform.

12 A. An eligible supplemental environmental project is limited to the following
13 categories:

14 (1) Pollution prevention projects that eliminate all or a significant portion of
15 pollutants at the point of generation;

16 (2) Pollution reduction projects that significantly decrease the release of
17 pollutants into a waste stream at the point of discharge to a point significantly
18 beyond levels required for compliance;

19 (3) Environmental enhancement projects in the same ecosystem or geographic
20 area of the violation that significantly improve an area beyond what is required to
21 remediate any damage caused by the violation that is the subject of the
22 enforcement action;

23 (4) Environmental awareness projects substantially related to the violation that
24 provide training, publications or technical support to members of the public
25 regulated by the department;

26 (5) Scientific research and data collection projects that advance the scientific
27 basis on which regulatory decisions are made;

28 (6) Emergency planning and preparedness projects that assist state or local
29 emergency response and planning entities in preparing or responding to
30 emergencies; and

31 (7) Public health projects that provide a direct and measurable benefit to public
32 health.

33 B. Supplemental environmental projects may not be used for the following
34 situations:

35 ~~(1) Repeat violations of the same or a substantially similar law administered by~~
36 ~~the department by the same person;~~

37 (2) When a project is required by law;

38 (3) If the violator had previously planned and budgeted for the project;

39 (4) To offset any calculable economic benefit of noncompliance;

- 1 (5) If the violation is the result of reckless or intentional conduct; or
- 2 (6) If the project primarily benefits the violator.

3 Any settlement that includes a supplemental environmental project must provide that
4 expenditures are not tax deductible and are ineligible for certification as tax exempt
5 pollution control facilities pursuant to Title 36, chapters 105 and 211.

6 **Sec. 2. 38 MRSA §589, sub-§3**, as amended by PL 1993, c. 464, §1, is further
7 amended to read:

8 **3. Emission monitoring devices.** Except as provided in this subsection, failure by a
9 person to register, install, maintain and use emission monitoring devices or to file reports
10 from those devices renders that person liable to the penalties prescribed in section 349.
11 Emission monitoring devices must record accurate and reliable data during all source-
12 operating time except for periods when emission monitoring devices are subject to
13 established quality assurance and quality control procedures or to unavoidable
14 malfunction. In any enforcement action brought by the department, the burden of proof is
15 on the licensee to demonstrate that the failure of emission monitoring devices to record
16 accurate and reliable data was due to an unavoidable malfunction or the performance of
17 established quality assurance and quality control procedures on the monitoring system.

18 A. The department may not initiate enforcement action pursuant to section 349
19 against any person for failure to operate a continuous emission monitoring system for
20 gaseous emissions as long as the system is recording accurate and reliable data at
21 least ~~90%~~ 95% of the source-operating time in each quarter of the calendar year and
22 the person can demonstrate to the satisfaction of the department that the failure of the
23 system to record accurate and reliable data during any period of time was due to the
24 performance of established quality assurance and quality control procedures or
25 unavoidable malfunctions. If the continuous emission monitoring system for gaseous
26 emissions is recording accurate and reliable data less than ~~90%~~ 95% of source-
27 operating time within any quarter of the calendar year, the department may initiate
28 enforcement action and may include in that enforcement action any period of time
29 that the continuous emission monitoring system was not recording accurate and
30 reliable data during that quarter unless the licensee can demonstrate to the satisfaction
31 of the department that the failure of the system to record accurate and reliable data
32 was due to the performance of established quality assurance and quality control
33 procedures or unavoidable malfunctions.

34 B. The department may not initiate enforcement action pursuant to section 349
35 against any person for failure to operate a continuous opacity monitoring system as
36 long as the system is recording accurate and reliable data at least 95% of the source-
37 operating time in each quarter of the calendar year, excluding time periods when the
38 licensee is performing quality assurance and quality control procedures on the system
39 that are required by the department, and the person can demonstrate to the
40 satisfaction of the department that the failure of the system to record accurate and
41 reliable data during any period of time was due to the performance of established
42 quality assurance and quality control procedures or unavoidable malfunctions. If the
43 continuous opacity monitoring system is recording accurate and reliable data less
44 than 95% of the source-operating time within any quarter of the calendar year, the

1 department may initiate enforcement action and may include in that enforcement
2 action any period of time that the continuous opacity monitoring system was not
3 recording accurate and reliable data during that quarter unless the licensee can
4 demonstrate to the satisfaction of the department that the failure of the system to
5 record accurate and reliable data was due to the performance of established quality
6 assurance and quality control procedures or unavoidable malfunctions.

7 **Sec. 3. 38 MRSA §2124-A, first ¶**, as amended by PL 2011, c. 655, Pt. GG, §31
8 and affected by §70, is further amended to read:

9 By January 1, ~~2013~~ 2020 and ~~annually~~ biennially thereafter, the department shall
10 submit a report to the joint standing committee of the Legislature having jurisdiction over
11 environmental and natural resources matters and the Governor setting forth information
12 on statewide generation of solid waste, statewide recycling rates and available disposal
13 capacity for solid waste.

14 **SUMMARY**

15 This bill, which is reported out by the Joint Standing Committee on Environment and
16 Natural Resources pursuant to the Maine Revised Statutes, Title 3, section 955,
17 subsection 4, implements the recommendations resulting from the committee's State
18 Government Evaluation Act review of the Department of Environmental Protection as
19 follows:

20 1. It removes a statutory provision prohibiting a repeat violator of the same
21 environmental law from taking advantage of a supplemental environmental project to
22 mitigate an assessed civil penalty;

23 2. It allows a violator of an environmental law to offset up to 100% of an assessed
24 civil penalty by conducting a supplemental environmental project. Under current law,
25 such a violator may offset no more than 80% of an assessed civil penalty by conducting a
26 supplemental environmental project;

27 3. It clarifies 2 statutory exemptions from the requirement that air contamination
28 sources maintain continuous emission monitoring systems to mitigate a conflict between
29 the current statutory provisions on continuous emission monitoring and existing
30 applicable federal regulations; and

31 4. It provides that the solid waste generation and disposal capacity report the
32 department currently must submit annually to the joint standing committee of the
33 Legislature having jurisdiction over environmental and natural resources matters must be
34 submitted only biennially.