

# STATE OF NEW YORK

8145

## IN SENATE

April 8, 2020

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the civil practice law and rules, in relation to establishing a cause of action for medical monitoring

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a  
2 new section 37-0116 to read as follows:

3 § 37-0116. Cause of action for medical monitoring.

4 1. For the purpose of this section, the following terms shall have the  
5 following meanings:

6 (a) "exposure" shall have the same meaning set forth in section two  
7 hundred fourteen-c of the civil practice law and rules.

8 (b) "toxic substance" shall mean:

9 (i) any chemical or biological substance that poses a risk to human  
10 health as defined by the commissioner pursuant to section 37-0103 of  
11 this title;

12 (ii) any substance categorized as toxic or hazardous by the United  
13 States environmental protection agency or the United States agency for  
14 toxic substance and disease registry shall be a hazardous or toxic  
15 substance; and

16 (iii) any substance not so characterized may be proven to be toxic by  
17 a preponderance of the evidence.

18 (c) "release" shall mean any intentional or unintentional, permitted  
19 or unpermitted, act or omission that allows a toxic substance to enter  
20 the air, land, surface water, groundwater, or any other place where the  
21 toxic substance may be located.

22 (d) "medical monitoring" shall mean a program of medical surveillance,  
23 including medical tests or procedures for the purpose of early detection  
24 of signs or symptoms of latent disease resulting from exposure.

25 (e) "latent disease" shall mean any condition that negatively affects  
26 human health by causing death or permanent or protracted loss of mental

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 or physical function which a person has a significantly increased risk  
2 of contracting.

3 (f) "reasonably necessary" shall mean the standard whereby a physician  
4 would prescribe testing for the purpose of detecting or monitoring the  
5 latent disease.

6 (g) "person" shall mean an individual, firm, corporation, association,  
7 partnership, consortium, joint venture, commercial entity, federal  
8 government, state, municipality, commission, political subdivision, or  
9 any interstate body.

10 2. A person with or without a present injury or disease shall have a  
11 cause of action for medical monitoring damages against a person who  
12 released a toxic substance if all of the following are demonstrated by a  
13 preponderance of the evidence:

14 (a) the person may have been exposed to the toxic substance as a  
15 result of the unauthorized release by the person who released the toxic  
16 substance;

17 (b) there is a probable link between exposure to the toxic substance  
18 and a latent disease;

19 (c) the person's exposure to the toxic substance increases the risk of  
20 developing the latent disease, provided that such person shall not be  
21 required to prove that the latent disease is certain or likely to devel-  
22 op as a result of the exposure;

23 (d) diagnostic testing is reasonably necessary; and

24 (e) medical tests or procedures exist to detect the latent disease.

25 3. Nothing in this section shall be construed to preclude the pursuit  
26 of any other civil or injunctive remedy available under statute or  
27 common law, including the right of any person to recover for damages  
28 related to the manifestation of a latent disease. The remedies in this  
29 section are in addition to those provided by existing statutory or  
30 common law.

31 4. This section does not preclude a court from certifying a class  
32 action for medical monitoring damages.

33 § 2. The civil practice law and rules is amended by adding a new  
34 section 214-i to read as follows:

35 § 214-i. Cause of action for medical monitoring. Notwithstanding any  
36 provision of law to the contrary, a cause of action for medical monitor-  
37 ing pursuant to section 37-0116 of the environmental conservation law,  
38 may be commenced by the plaintiff within the period allowed pursuant to  
39 section two hundred fourteen-c of this article or within one year of the  
40 effective date of this section.

41 § 3. This act shall take effect immediately.