

# STATE OF NEW YORK

4371

2021-2022 Regular Sessions

## IN SENATE

February 3, 2021

Introduced by Sen. BIAGGI -- 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, in relation to emissions of toxic air contaminants; and to amend the state finance law, in relation to establishing the community benefit fund

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 19-0329 to read as follows:

3 § 19-0329. Air quality standards for toxic air contaminants.

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

6 a. "Adjacent to" shall mean within a radius of one mile.

7 b. "Economically distressed area" shall mean an area characterized by  
8 a poverty rate of at least twenty percent; or an unemployment rate of at  
9 least one hundred twenty-five percent of the statewide unemployment  
10 rate.

11 c. "Ethnic group" shall mean those groups identified in the definition  
12 of minority group member in subdivision eight of section three hundred  
13 ten of the executive law.

14 d. "Environmental justice community" shall mean an economically  
15 distressed or minority community and includes, but is not limited to,  
16 environmental justice areas identified by the department.

17 e. "Fenceline" shall mean the property boundary of a major source.

18 f. "Major source" shall mean an air contamination source that emits or  
19 has the potential to emit five pounds per year or more of a toxic air  
20 contaminant.

21 g. "Minority community" shall mean any census tract, census block or  
22 census block group that includes twenty-five percent or more of any  
23 ethnic group.

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

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1 h. "Toxic air contaminant" shall mean benzene, formaldehyde, vinyl  
2 chloride, polychlorinated dibenzodioxins, polychlorinated dibenzofurans,  
3 trichloroethylene and mercury.

4 2. Promulgation of standards. a. The department shall, on or before  
5 July first, two thousand twenty-two, promulgate ambient air quality  
6 standards for the following toxic air contaminants: benzene, formaldeh-  
7 yde, vinyl chloride, polychlorinated dibenzodioxins, polychlorinated  
8 dibenzofurans, trichloroethylene and mercury. Such standards may be  
9 hourly, rolling eight-hour or annual, or any combination thereof, as  
10 determined by the department in consultation with the department of  
11 health.

12 b. The ambient air quality standards for toxic air contaminants shall  
13 be based on the best available scientific data concerning the potential  
14 adverse human health effects of each contaminant and shall protect  
15 public health with an adequate margin of safety.

16 c. The department shall promulgate such rules and regulations as  
17 deemed necessary to implement the provisions of this section.

18 3. Monitoring and reporting. a. The owner or operator of a major  
19 source located in or adjacent to an environmental justice community  
20 shall, no later than July first, two thousand twenty-two, submit to the  
21 department a plan to install, operate and maintain a fenceline monitor-  
22 ing system at such source to measure ambient air concentrations of each  
23 toxic air contaminant the source emits or has the potential to emit. The  
24 department shall review and approve such plan within sixty days of  
25 receipt.

26 b. The owner or operator of a major source subject to this subdivision  
27 shall install, operate and maintain a fenceline monitor system meeting  
28 the requirements of this subdivision no later than thirty days after  
29 approval of the fenceline monitoring system plan by the department.

30 c. The owner or operator of a major source subject to this subdivision  
31 shall submit to the department, on a quarterly basis, a report comparing  
32 the fenceline monitoring results with the ambient air quality standards  
33 for each toxic air contaminant the source emits or has the potential to  
34 emit. The comparison of the fenceline monitoring results with the ambi-  
35 ent air quality standards shall not make adjustments to account for  
36 actual or potential offsite upwind source of toxic air contaminants.

37 d. The quarterly reports required by this subdivision shall be made  
38 available to the public on the department's website.

39 4. Prohibitions. a. No person shall emit or cause to be emitted from  
40 an air contamination source a toxic air contaminant in an amount or  
41 level that causes or contributes to a violation of an ambient air quali-  
42 ty standard for that contaminant.

43 b. The department shall not issue a permit, certificate or other  
44 approval under this article to the owner or operator of a major source  
45 that emits or has the potential to emit a toxic air contaminant unless  
46 the source owner or operator demonstrates that the source's emissions of  
47 such contaminant will not cause or contribute to a violation of any  
48 applicable ambient air quality standard for toxic air contaminants.

49 5. Violations and penalties. a. Any person who violates an ambient air  
50 quality for a toxic air contaminant or fails to perform any duty imposed  
51 by any rule or regulation promulgated pursuant to this section shall be  
52 subject to the civil and administrative sanctions set forth in section  
53 71-2113 of this chapter.

54 b. Penalties. A civil penalty for violations of this section by a  
55 major source subject to the provisions of subdivision three of this  
56 section shall be deposited into the community benefit fund established

1 pursuant to section ninety-seven-ccc of the state finance law, provided  
2 however, that deposit of the civil penalty into a community benefit fund  
3 shall not diminish the payable portion of such civil penalty.

4 § 2. The state finance law is amended by adding a new section 97-ccc  
5 to read as follows:

6 § 97-ccc. Community benefit fund. 1. There is hereby established in  
7 the joint custody of the comptroller, the commissioner of taxation and  
8 finance, and the commissioner of environmental conservation a special  
9 fund to be known as the community benefit fund.

10 2. Such fund shall consist of all moneys deposited pursuant to para-  
11 graph b of subdivision five of section 19-0329 of the environmental  
12 conservation law.

13 3. The moneys in the fund shall be expended by the department for  
14 environmental conservation for the purpose of implementing one or more  
15 environmental benefit projects that directly and verifiably benefit the  
16 adjacent environmental justice community.

17 4. On or before the first day of February each year, the comptroller  
18 shall certify to the temporary president of the senate, and the speaker  
19 of the assembly, the amount of money deposited by source in the fund  
20 during the preceding calendar year, as well as all disbursements from  
21 the fund during the preceding calendar year.

22 5. Moneys shall be payable from the fund on the audit and warrant of  
23 the comptroller on vouchers certified and approved by the commissioner  
24 of environmental conservation.

25 § 3. This act shall take effect on the ninetieth day after it shall  
26 have become a law.