

# STATE OF NEW YORK

4371--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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" 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 stationary air contamination source that  
19 emits or has the potential to emit ten tons per year or more of a toxic  
20 air contaminant or twenty-five tons per year or more of a combination of  
21 toxic contaminants.

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

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1 g. "Minority community" shall mean any census tract, census block or  
2 census block group that includes twenty-five percent or more of any  
3 ethnic group.

4 h. "Toxic air contaminant" shall mean benzene, formaldehyde, vinyl  
5 chloride, polychlorinated dibenzodioxins, polychlorinated dibenzofurans,  
6 trichloroethylene and mercury.

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

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

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

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

29 b. The owner or operator of a major source subject to this subdivision  
30 shall install, operate and maintain a fence line monitoring system meeting  
31 the requirements of this subdivision no later than thirty days after  
32 approval of the fence line monitoring system plan by the department.

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

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

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

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

52 5. Violations and penalties. a. Any person who violates an ambient air  
53 quality for a toxic air contaminant or fails to perform any duty imposed  
54 by any rule or regulation promulgated pursuant to this section shall be  
55 subject to the civil and administrative sanctions set forth in section  
56 71-2113 of this chapter.

1 b. Penalties. A civil penalty for violations of this section by a  
2 major source subject to the provisions of subdivision three of this  
3 section shall be deposited into the community benefit fund established  
4 pursuant to section ninety-seven-ccc of the state finance law, provided  
5 however, that deposit of the civil penalty into a community benefit fund  
6 shall not diminish the payable portion of such civil penalty.

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

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

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

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

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

25 5. Moneys shall be payable from the fund on the audit and warrant of  
26 the comptroller on vouchers certified and approved by the commissioner  
27 of environmental conservation.

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