

# STATE OF NEW YORK

4371--B

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 -- 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:

Section 1. The environmental conservation law is amended by adding a new section 19-0329 to read as follows:

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

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

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

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

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

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

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

f. "Major source" shall mean stationary air contamination source that emits or has the potential to emit ten tons per year or more of a toxic

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

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1 air contaminant or twenty-five tons per year or more of a combination of  
2 toxic contaminants.

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

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

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

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

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

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

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

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

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

44 e. The department may grant an extension of the deadline in paragraph  
45 (a) of this subdivision upon a written showing by the owner or operator  
46 of a major source that compliance with the monitoring requirements of  
47 this subdivision will cause economic hardship; provided, however, that  
48 the extension granted by the department shall not exceed eighteen  
49 months.

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

54 b. The department shall not issue a permit, certificate or other  
55 approval under this article to the owner or operator of a major source  
56 that emits or has the potential to emit a toxic air contaminant unless

1 the source owner or operator demonstrates that the source's emissions of  
2 such contaminant will not cause or contribute to a violation of any  
3 applicable ambient air quality standard for toxic air contaminants.

4 5. Violations and penalties. a. Any person who violates an ambient air  
5 quality for a toxic air contaminant or fails to perform any duty imposed  
6 by any rule or regulation promulgated pursuant to this section shall be  
7 subject to the civil and administrative sanctions set forth in section  
8 71-2113 of this chapter.

9 b. Penalties. A civil penalty for violations of this section by a  
10 major source subject to the provisions of subdivision three of this  
11 section shall be deposited into the community benefit fund established  
12 pursuant to section ninety-seven-ccc of the state finance law, provided  
13 however, that deposit of the civil penalty into a community benefit fund  
14 shall not diminish the payable portion of such civil penalty.

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

17 § 97-ccc. Community benefit fund. 1. There is hereby established in  
18 the joint custody of the comptroller, the commissioner of taxation and  
19 finance, and the commissioner of environmental conservation a special  
20 fund to be known as the community benefit fund.

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

24 3. The moneys in the fund shall be expended by the department for  
25 environmental conservation for the purpose of implementing one or more  
26 environmental benefit projects that directly and verifiably benefit the  
27 adjacent environmental justice community.

28 4. On or before the first day of February each year, the comptroller  
29 shall certify to the temporary president of the senate, and the speaker  
30 of the assembly, the amount of money deposited by source in the fund  
31 during the preceding calendar year, as well as all disbursements from  
32 the fund during the preceding calendar year.

33 5. Moneys shall be payable from the fund on the audit and warrant of  
34 the comptroller on vouchers certified and approved by the commissioner  
35 of environmental conservation.

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