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

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

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

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

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

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

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

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

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

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

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

4. Prohibitions. a. No person shall emit or cause to be emitted from an air contamination source a toxic air contaminant in an amount or level that causes or contributes to a violation of an ambient air quality standard for that contaminant.

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

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

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

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

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

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

2. Such fund shall consist of all moneys deposited pursuant to paragraph b of subdivision five of section 19-0329 of the environmental conservation law.

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

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

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

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