

# S.3328 (Fernandez)/A.7363 (Septimo)

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<b>BILL</b> S.3328 (Fernandez)/A.7363 (Septimo)
<b>SUBJECT</b> State Regulation of Toxic Air Emissions
<b>DATE</b> February 03, 2023
<b>OPPOSE</b>

This legislation mandates that, by December 31, 2025, the state Department of Environmental Conservation (DEC) “promulgate ambient air quality standards” for seven specified air toxics, providing that such standards may be on an hourly, eight hour or annual basis. It also directs the DEC to adopt regulations addressing when and how “fenceline monitoring” will be required for air toxic emission from major sources.

The bill's memo in support states that this legislation "is necessary to reduce emissions of toxic air contaminants in New York State, and lessen their impact in low income [communities] and communities of color."

We fully respect the concerns expressed in this legislation regarding the impact of air emission. However, we believe this legislation is unnecessary as it largely overlaps existing state statutory and regulatory requirements that have effectively controlled air toxic emissions to the point where few major sources remain in the state. At most, we see this legislation as requiring well-established procedural and technical guidance for the regulation of major sources of air toxics to be adopted as formal regulation. Even so, the underpinnings of the state's air toxics program has been set in statute and regulations for decades. Similar legislation (S.4371-D/A.6150-B) was vetoed in 2022, with the veto message saying that the bill was "duplicative, unnecessary and could divert state resources from implementing other crucial programs to protect New Yorkers."

"Air toxics" or "hazardous air pollutants" are currently regulated under both federal and state law.

At the federal level, they are addressed by the first National Emission Standards for Hazardous Air Pollutants (or NESHAPs) program. These are a combination of health and technology-based standards.

At the state level, these emission sources are regulated under Article 19 of the Environmental Conservation Law and its regulatory counterpart, 6 NYCRR Part 212. In addition, other DEC regulations govern a number of specific categories of air contaminants (e.g., iron and steel processes, cement and glass plants, stationary combustion facilities, and others).

Many sources are covered by both the federal and state "air toxics" regulations. And while process emission source regulated by a federal NESHAP are generally considered to be in compliance with state regulations, this exemption does not apply to state-identified "high toxicity air contaminants" listed in Part 212 – a list that includes all the substances targeted in this proposed legislation.

The DEC has a long-standing program for implementing its air toxics program, with the details for assessing and regulating emissions sources set forth in guidance, DAR-1, commonly referred to as "Air Guide 1." Air Guide 1 sets forth both short-term and

annual ambient concentrations for hundreds of air contaminants and compounds, and emission sources are measured against and regulated based on non-exceedance of these ambient standards. In effect, the ambient air quality standards called for in this legislation are in place and applied to all existing and proposed major sources.

Finally, while this legislation requires DEC to develop a plan for “fenceline monitoring” of air toxics, it should be recognized that, as part of the Climate Leadership and Community Protection Act, or CLCPA, this requirement is already in place and moving forward. That statute (see ECL §75-0115) requires the Department of Environmental Conservation to:

- by October 1, 2022, prepare “a program demonstrating community air monitoring systems” focused on disadvantaged communities with potentially high exposure burdens for toxic air contaminants and criteria air pollutants,” and
- by June 1, 2024, prepare a strategy to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities affected by a high cumulative exposure burden. The strategy will include the identification of communities with high cumulative exposure burdens for both toxic air contaminants and criteria air pollutants, the identification of emission sources, and an assessment of the existing and available measures for reducing emissions from these contributing sources.

Further, the CLCPA also reconfirms the DEC’s authority to adopt regulations establishing programs to achieve emissions reductions for these targeted locations.

New York State has a longstanding program to regulate toxic air emissions – a program that in many respects is broader and more stringent than that required under the federal NESHAPs program. Likewise, in addition to ongoing federal and state air monitoring programs, the CLCPA already mandates a broader ambient air monitoring program in designated disadvantaged areas across the state.

For these reasons, The Business Council respectfully recommends against approval of S.3328/A.7363

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