

STATE OF NEW YORK

3575--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 28, 2025

Introduced by M. of A. MITAYNES, KELLES, R. CARROLL, FORREST, GONZALEZ-ROJAS, MAMDANI, REYES, EPSTEIN, ROZIC, MEEKS, RAGA, ANDERSON, SHRESTHA, LEVENBERG, SIMON, VALDEZ, GALLAGHER, SEPTIMO, SIMONE, HOOKS -- read once and referred 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 establishing an indirect source review for certain warehouse operations

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 19-0333 to read as follows:

§ 19-0333. Indirect source review for heavy distribution warehouses.

1. As used in this section the following terms shall have the following meanings:

a. "Affiliate" means, with respect to any specified person, a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such person.

b. "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of (1) the management and policies of a person, (2) the operation of a person, or (3) substantially all of the assets of a person, whether through the ownership of voting securities, by contract, or otherwise.

c. "Heavy distribution warehouse" means a facility that falls under one or more of the following categories:

(1) Fulfillment center. A facility whose primary purpose is storage and distribution of goods to consumers or end-users, either directly or through a parcel hub.

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

LBD00800-03-5

(2) Parcel hub. A last mile facility or similar facility whose primary purpose is processing or redistribution of goods for delivery directly to consumers or end-users, by moving a shipment from one mode of transport to a vehicle with a rated capacity of less than ten thousand pounds.

(3) Parcel sorting facility. A facility whose primary purpose is sorting or redistribution of goods from a fulfillment center to a parcel hub.

d. "Qualifying warehouse" means any heavy distribution warehouse that is fifty thousand square feet or greater, whether as originally constructed or as modified, or which is owned or operated by any person, including for such purposes all affiliates of such person, who in aggregate owns or operates five hundred thousand or more square feet of heavy distribution warehouse space in the state.

e. "Warehouse modification" means a modification to a warehouse which adds additional warehouse floor space that may be used for warehousing activities, or a change in operations of a warehouse which is likely to result in a significant increase in air pollution.

f. "Warehouse operator" means any entity that conducts day-to-day operations at a heavy distribution warehouse, including operations conducted through the use of third-party contractors. For purposes of clause (i) of subparagraph one of paragraph c of subdivision two of this section, warehouse operator shall include affiliates of such warehouse operator.

2. a. No later than eighteen months after the effective date of this section, the department shall adopt a program providing for the facility-by-facility review of qualifying warehouses and adoption of measures to reduce air pollution associated with qualifying warehouse operations, including, in a manner not inconsistent with the regulation of indirect sources of pollution contemplated by 42 U.S.C. § 7410(a)(5), mobile sources of pollution, and shall promulgate any appropriate rules and regulations in connection therewith.

b. (1) In adopting such program and promulgating such rules and regulations, the department shall consider a variety of measures including but not limited to requiring all warehouse operators to implement an air pollution reduction and mitigation plan developed or approved by the department; creating a points system under which warehouse operators must gain a certain number of points, based on the amount of traffic that results from their operations, through mitigation measures such as acquiring and using zero-emissions vehicles, installing and using on-site electric vehicle charging equipment, using alternatives to truck or van trips for incoming or outgoing trips, and/or installing solar electric power generation and battery storage systems; and requiring enhanced mitigation measures for qualifying warehouses located near sensitive receptors including but not limited to schools, daycares, playgrounds, parks, hospitals, senior centers or nursing homes and disadvantaged communities as defined in subdivision five of section 75-0101 of this chapter.

(2) Such rules and regulations shall provide that, when considering alternatives to truck or van trips for incoming or outgoing trips, the warehouse operator shall, no less than forty-five and no more than ninety days prior to implementation of such alternative, inform impacted employees, in writing, of the proposed change. The warehouse operator shall maintain a record of having provided written notice to impacted employees. The written notice shall include, at minimum: descriptions of the vehicles and equipment to be used; anticipated physical requirements

1 of operation of such vehicles and equipment; anticipated date of imple-
2 mentation; and instructions for training and application for transfer to
3 those positions. In addition to the foregoing notice requirements, if
4 employees in the warehouse have an exclusive bargaining unit represen-
5 tative, the warehouse operator will certify that such representative has
6 agreed in writing to any operational changes that impact the scope of
7 the bargaining unit or bargained-for terms of a collective bargaining
8 agreement then in place, prior to utilizing alternatives.

9 c. (1) Under the program, the department shall require any proposed
10 new development of a qualifying warehouse, modification of an existing
11 facility which would result in the facility constituting a qualifying
12 warehouse, or warehouse modification of a qualifying warehouse, to first
13 obtain a permit demonstrating that any additional traffic resulting from
14 construction and operation will not result in a violation of one or more
15 national ambient air quality standards established by the federal envi-
16 ronmental protection agency or, if a violation already exists, will not
17 exacerbate such violation, as determined in a manner consistent with the
18 state implementation plan. In addition, newly constructed qualifying
19 warehouses shall be required to demonstrate that (i) the warehouse oper-
20 ator has not been held by an administrative agency or court of competent
21 jurisdiction to be in violation of any indirect source rule which is not
22 inconsistent with the regulation of indirect sources of pollution
23 contemplated by 42 U.S.C. § 7410(a)(5), including pursuant to this
24 section, or any other federal, state or local air quality standards
25 related to its logistics operations, in the two years prior to the date
26 of application, and (ii) the proposed qualifying warehouse meets LEED
27 silver, gold or platinum standards, or a functionally equivalent stand-
28 ard.

29 (2) The department shall require applicants to submit information
30 necessary to make such a determination pursuant to subparagraph one of
31 this paragraph, including but not limited to, projected average number
32 of daily vehicle trips and primary routes to the facility, a study of
33 potential traffic and congestion impacts, identification of all sensi-
34 tive receptors, including but not limited to, schools, daycares, play-
35 grounds, parks, hospitals, senior centers or nursing homes and disadvan-
36 taged communities as defined by section 75-0101 of this chapter, near
37 the proposed warehouse or near the primary vehicle routes, and an
38 initial plan for compliance with paragraph b of this subdivision in a
39 form prescribed by the department.

40 d. Under the program the department shall establish ongoing monitoring
41 and reporting requirements for qualifying warehouse operators. Such
42 monitoring shall include but not be limited to periodic desktop and
43 field audits; contacting warehouse owners and warehouse operators to
44 request further documentation or clarification on submitted reports; and
45 conducting field visits of the warehouse facilities during regular busi-
46 ness hours to verify a facility is following recordkeeping and other
47 applicable requirements. All reports shall be made accessible to the
48 public, in full and unredacted except to the extent necessary to keep
49 personal information confidential, and posted on a publicly available
50 website. Reporting requirements shall include, but not be limited to,
51 annual reporting of:

52 (1) The average daily number of inbound and outbound vehicle trips by
53 vehicle weight and class, and by time of day and day of the week;

54 (2) The average daily vehicle miles traveled for all vehicles making
55 inbound and outbound trips to and from the qualifying warehouse;

(3) The average daily vehicle miles traveled and number of inbound and outbound trips for alternative modes of freight;

(4) A heat map of the frequency data for trip destinations;

(5) The number of jobs at the facility, including drivers and others employed by third-party contractors, with a breakdown of percentage of part-time and full-time employees, independent contractors, unionized and non-union employees;

(6) The percentage of vehicles used, specifying on-road vehicles and off-road vehicles as well as weight and vehicle class, that are zero emissions;

(7) The number of electric vehicle charging stations installed and actual usage;

(8) The number of hydrogen fueling stations installed and actual usage;

(9) The number of on-site renewable energy generation systems installed;

(10) The number of vehicles used to deliver from the site that are owned by the warehouse operator but leased to a third party, and the proportion of leased vehicles used as compared to vehicles owned by the warehouse operator;

(11) The identity of subcontractors who conduct more than ten percent of total delivery vehicle trips from the site, including the entity name, principal officers, business address and contact information, and total number of employees; and

(12) Any other information necessary to effectively implement and enforce any rule or regulation promulgated pursuant to this section.

3. The department shall impose an annual registration fee for qualifying warehouse operators.

4. Within eighteen months of the effective date of this section, the department shall complete a study on the feasibility, benefits and costs of implementing low- and zero-emissions designated zones for medium- and heavy-duty vehicles as defined in regulations promulgated pursuant to section 19-0306-b of this title within the state that are designed to lower air pollution, congestion, greenhouse gas emissions, and noise, and to increase safety. The study shall include recommendations for implementation of low- and zero-emissions zones at the state and local level and shall be made available to the public and posted on a publicly available website. In conducting the study, the department shall consider:

a. Creation of zones restricting deliveries to zero-emissions delivery vehicles only;

b. Creation of zones requiring delivery vehicles to meet certain stringent air pollution standards;

c. Creation of zones requiring a fee for entry for diesel-powered medium- and heavy-duty vehicles;

d. Prioritization of low- and zero-emissions zones within disadvantaged communities identified under article seventy-five of this chapter; nonattainment zones under the national ambient air quality standards set by the federal environmental protection agency in 42 U.S.C. 7401; and other vulnerable areas including areas proximate to schools, daycares, playgrounds, parks, hospitals, senior centers or nursing homes;

e. Incentives and enforceable measures for low- and zero-emissions zones, including fees;

f. Measures to ensure reinvestment of any revenues from fees in public transit and zero-emissions transportation infrastructure;

1 g. Equity considerations, including preventing unintended regressive
2 cost impacts for low- and moderate-income New Yorkers; and

3 h. Barriers to implementing low- and zero-emissions zones in the state
4 and recommendations for overcoming such barriers.

5 5. a. The provisions of subdivisions one, two and three of this
6 section shall not apply in a city with a population of one million or
7 more which, in consultation with and subject to the review and approval
8 of the department after a public hearing in compliance with the state
9 administrative procedure act, establishes and implements a program by
10 adopting a local law or ordinance to regulate indirect source pollution
11 from qualifying warehouses in a manner not inconsistent with the regu-
12 lation of indirect source pollution contemplated by 42 U.S.C. §
13 7410(a)(5); provided, however, any such municipal indirect source
14 pollution program shall be, in the determination of the department, at
15 least as stringent as the program established under subdivisions one,
16 two and three of this section and all rules and regulations promulgated
17 pursuant thereto.

18 b. The department shall require any city establishing and implementing
19 an indirect source pollution program in accordance with this subdivision
20 to require the program to implement all data collection and reporting
21 requirements contemplated by subdivision two of this section and submit
22 all such data and reporting information to the department no less
23 frequently than every twelve months for review by the department.

24 c. The department shall conduct an annual review of any indirect
25 source pollution program established and implemented pursuant to this
26 subdivision. Such reviews shall evaluate whether, among other relevant
27 matters, such program continues to be at least as stringent as the
28 program established under subdivisions one, two and three of this
29 section.

30 d. In the event that the department determines that a program estab-
31 lished pursuant to this subdivision is not meeting any applicable
32 requirements under this subdivision, the department shall immediately
33 notify such city of the deficiencies and if, in the determination of the
34 department, the city does not take satisfactory corrective action, the
35 department may take any corrective action it deems appropriate, includ-
36 ing but not limited to suspending or terminating the approval contem-
37 plated by paragraph a of this subdivision and enforcing the provisions
38 of this section in such city; provided, however, any indirect source
39 pollution law in effect in a city of one million or more as of the
40 effective date of this section may not be found to be failing to meet
41 such applicable requirements for the one-year period following the
42 effective date of this section.

43 e. The exemption contemplated by this subdivision shall be limited to
44 the regulation of indirect source pollution from qualifying warehouses
45 and may not be construed as an exemption from compliance with any other
46 law, rule, regulation, decision or order.

47 § 2. This act shall take effect on the thirtieth day after it shall
48 have become a law.