

# STATE OF NEW YORK

2127--A

2023-2024 Regular Sessions

## IN SENATE

January 18, 2023

Introduced by Sens. GIANARIS, FERNANDEZ, GONZALEZ, GOUNARDES, HOYLMAN-SIGAL, MYRIE, WEBB -- 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 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:

1 Section 1. The environmental conservation law is amended by adding a  
2 new article 74 to read as follows:

### ARTICLE 74

#### INDIRECT SOURCE REVIEW

##### Section 74-0101. Definitions.

74-0103. Indirect source review.

74-0105. Zero-emissions zones study.

##### § 74-0101. Definitions.

As used in this article the following terms shall have the following meanings:

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

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

(b) 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.

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

LBD04869-02-3

1 (c) Parcel sorting facility. A facility whose primary purpose is sort-  
2 ing or redistribution of goods from a fulfillment center to a parcel  
3 hub.

4 2. "Qualifying warehouse" means any heavy distribution warehouse that  
5 is fifty thousand square feet or greater, or which is owned or operated  
6 by any person who in aggregate owns or operates five hundred thousand or  
7 more of heavy distribution warehouse space in the state.

8 3. "Warehouse operator" means any entity that conducts day-to-day  
9 operations at a heavy distribution warehouse, including operations  
10 conducted through the use of third-party contractors.

11 4. "Major modification" shall have the same meaning as it does in 40  
12 CFR 52.21(b)(2).

13 5. "Mobile source emissions" shall have the same meaning as it does in  
14 40 CFR § 51.491.  
15 § 74-0103. Indirect source review.

16 1. No later than twelve months after the effective date of this  
17 section, the department shall promulgate rules and regulations providing  
18 for the facility-by-facility review of qualifying warehouses and  
19 adoption of measures to reduce air pollution associated with emissions  
20 related to qualifying warehouse operations, including mobile source  
21 emissions.

22 2. In promulgating such rules and regulations, the department shall  
23 consider a variety of measures including but not limited to requiring  
24 all warehouse operators to implement an air emissions reduction and  
25 mitigation plan developed or approved by the department; creating a  
26 points system under which warehouse operators must gain a certain number  
27 of points, based on the amount of truck traffic that results from their  
28 operations, through mitigation measures such as acquiring and using  
29 zero-emissions vehicles, installing and using on-site electric vehicle  
30 charging equipment, using alternatives to truck or van trips for incom-  
31 ing or outgoing trips, and/or installing solar electric power generation  
32 and battery storage systems; and requiring enhanced mitigation measures  
33 for warehouses located near sensitive receptors including but not limit-  
34 ed to schools, daycares, playgrounds, parks, hospitals, senior centers  
35 or nursing homes and disadvantaged communities as defined by section  
36 75-0101 of this chapter. When considering alternatives to truck or van  
37 trips for incoming or outgoing trips, the warehouse operator will  
38 consult impacted and displaced employees in selecting an alternative to  
39 truck or van trips and will only utilize such alternative upon agreement  
40 with the impacted and displaced employees. In addition to requiring  
41 agreement from the impacted and/or displaced employees, if employees in  
42 the warehouse have an exclusive bargaining unit representative and the  
43 bargaining unit or terms of the collective bargaining agreement is  
44 impacted, the warehouse operator will be required to consult and obtain  
45 agreement from such representative, in writing, prior to utilizing  
46 alternatives.

47 3. (a) The department shall require any proposed new development or  
48 major modification of a qualifying warehouse to first obtain a permit  
49 demonstrating that any additional traffic resulting from its  
50 construction and operation will not result in a violation of national  
51 ambient air quality standards established by the federal environmental  
52 protection agency or, if a violation already exists, will not exacerbate  
53 such violation. In addition, newly constructed facilities shall be  
54 required to demonstrate (i) the operator has not been held by an admin-  
55 istrative agency or court of competent jurisdiction to be in violation  
56 of any federal, state or local air quality standards in the two years

1 prior to the date of application, and (ii) the proposed facility meets  
2 LEED platinum standards.

3 (b) The department shall require applicants to submit information  
4 necessary to make such a determination pursuant to paragraph (a) of this  
5 subdivision, including but not limited to, projected average number of  
6 daily truck trips and primary routes to the facility, a study of poten-  
7 tial traffic and congestion impacts, identification of all sensitive  
8 receptors, including but not limited to, schools, daycares, playgrounds,  
9 parks, hospitals, senior centers or nursing homes and disadvantaged  
10 communities as defined by section 75-0101 of this chapter, near the  
11 proposed warehouse or near the primary truck routes, and an initial  
12 emissions reduction and mitigation plan as provided for in subdivision  
13 two of this section.

14 4. The department shall establish ongoing monitoring and reporting  
15 requirements for warehouse operators. Such monitoring shall include but  
16 not be limited to periodic desktop and field audits; contacting ware-  
17 house owners and operators to request further documentation or clarifi-  
18 cation on submitted reports; and conducting field visits of the ware-  
19 house facilities at any time during regular business hours to verify a  
20 facility is following recordkeeping requirements and other applicable  
21 requirements. All reports shall be made accessible to the public, in  
22 full and unredacted, and posted on a publicly available website. Report-  
23 ing requirements shall include, but not be limited to, annual reporting  
24 of:

25 (a) The average daily number of inbound and outbound vehicle trips by  
26 vehicle weight and class, and by time of day and day of the week;

27 (b) The average daily vehicle miles traveled for all vehicles making  
28 inbound and outbound trips to and from the qualifying warehouse;

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

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

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

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

39 (g) The number of electric vehicle charging stations installed and  
40 actual usage;

41 (h) The number of hydrogen fueling stations installed and actual  
42 usage;

43 (i) The number of on-site renewable energy generation systems  
44 installed;

45 (j) The number of vehicles used to deliver from the site that are  
46 owned by the operator but leased to a third-party, and the proportion of  
47 leased vehicles vis a vis vehicles owned by the operator;

48 (k) The identity of subcontractors who conduct more than 10% of total  
49 delivery vehicle trips from the site, including the entity name, princi-  
50 pal officers, business address and contact information, and total number  
51 of employees; and

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

54 5. The department shall impose an annual registration fee for ware-  
55 house operators, and institute additional fees of fifty dollars per day  
56 that a violation exists for warehouse operators that fail to submit an

1 approved plan pursuant to subdivision two of this section or to other-  
2 wise comply with any rule or regulation promulgated pursuant to this  
3 section. Such fees are owed by no more than thirty calendar days after  
4 January first of each year.

5 § 74-0105. Zero-emissions zones study.

6 Within twelve months of the effective date of this section, the  
7 department shall complete a study on the feasibility, benefits and costs  
8 of implementing low- and zero-emissions designated zones for medium- and  
9 heavy-duty vehicles as defined in subdivision one of section 19-0320 of  
10 this chapter within the state that are designed to lower air pollution,  
11 congestion, greenhouse gas emissions, and noise, and to increase safety.  
12 The study shall include recommendations for implementation of low- and  
13 zero-emissions zones at the state and local level and shall be made  
14 available to the public and posted on a publicly available website. In  
15 conducting the study, the department shall consider:

16 1. Creation of zones restricting deliveries to zero-emissions delivery  
17 vehicles only;

18 2. Creation of zones requiring delivery vehicles to meet certain  
19 stringent emissions standards;

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

22 4. Prioritization of low- and zero-emissions zones within disadvan-  
23 taged communities identified under article seventy-five of this chapter;  
24 nonattainment zones under the national ambient air quality standards set  
25 by the federal environmental protection agency in 42 U.S.C. 7401; and  
26 other vulnerable areas including areas proximate to schools, daycares,  
27 playgrounds, parks, hospitals, senior centers or nursing homes, and  
28 disadvantaged communities as defined by section 75-0101 of this chapter;

29 5. Incentives and enforceable measures for low- and zero-emissions  
30 zones, including fees;

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

33 7. Equity considerations, including preventing unintended regressive  
34 cost impacts for low- and moderate-income New Yorkers; and

35 8. Barriers to implementing low- and zero-emissions zones in the state  
36 and recommendations for overcoming such barriers.

37 § 2. This act shall take effect immediately.