

STATE OF NEW YORK

1718--B

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

Introduced by M. of A. MITAYNES, CARROLL, FORREST, GALLAGHER, GONZALEZ-ROJAS, KELLES, MAMDANI, SEPTIMO, SIMON, REYES, EPSTEIN, ROZIC, BURGOS, MEEKS, RAGA, ANDERSON, THIELE, SHRESTHA, LEVENBERG -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- 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 section 19-0333 to read as follows:

3 § 19-0333. Indirect source review for heavy distribution warehouses.

4 1. As used in this section the following terms shall have the follow-
5 ing meanings:

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

9 b. "Control", including the terms "controlling", "controlled by" and
10 "under common control with", means the possession, directly or indirect-
11 ly, of the power to direct or cause the direction of (1) the management
12 and policies of a person, (2) the operation of a person, or (3) substan-
13 tially all of the assets of a person, whether through the ownership of
14 voting securities, by contract, or otherwise.

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

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

LBD04869-07-4

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

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

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

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

18 e. "Warehouse modification" means a modification to a warehouse which
19 adds additional warehouse space, or a change in operations of a ware-
20 house which is likely to result in a significant increase in air
21 pollution.

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

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

36 b. (1) In adopting such program and promulgating such rules and regu-
37 lations, the department shall consider a variety of measures including
38 but not limited to requiring all warehouse operators to implement an air
39 pollution reduction and mitigation plan developed or approved by the
40 department; creating a points system under which warehouse operators
41 must gain a certain number of points, based on the amount of traffic
42 that results from their operations, through mitigation measures such as
43 acquiring and using zero-emissions vehicles, installing and using
44 on-site electric vehicle charging equipment, using alternatives to truck
45 or van trips for incoming or outgoing trips, and/or installing solar
46 electric power generation and battery storage systems; and requiring
47 enhanced mitigation measures for qualifying warehouses located near
48 sensitive receptors including but not limited to schools, daycares,
49 playgrounds, parks, hospitals, senior centers or nursing homes and
50 disadvantaged communities as defined in subdivision five of section
51 75-0101 of this chapter.

52 (2) Such rules and regulations shall provide that, when considering
53 alternatives to truck or van trips for incoming or outgoing trips, the
54 warehouse operator shall, no less than forty-five and no more than nine-
55 ty days prior to implementation of such alternative, inform impacted
56 employees, in writing, of the proposed change. The warehouse operator

1 shall maintain a record of having provided written notice to impacted
2 employees. The written notice shall include, at minimum: descriptions of
3 the vehicles and equipment to be used; anticipated physical requirements
4 of operation of such vehicles and equipment; anticipated date of imple-
5 mentation; and instructions for training and application for transfer to
6 those positions. In addition to the foregoing notice requirements, if
7 employees in the warehouse have an exclusive bargaining unit represen-
8 tative, the warehouse operator will certify that such representative has
9 agreed in writing to any operational changes that impact the scope of
10 the bargaining unit or bargained-for terms of a collective bargaining
11 agreement then in place, prior to utilizing alternatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 3. The department shall impose an annual registration fee for ware-
30 house operators.

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

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

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

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

48 d. Prioritization of low- and zero-emissions zones within disadvan-
49 tagged communities identified under article seventy-five of this chapter;
50 nonattainment zones under the national ambient air quality standards set
51 by the federal environmental protection agency in 42 U.S.C. 7401; and
52 other vulnerable areas including areas proximate to schools, daycares,
53 playgrounds, parks, hospitals, senior centers or nursing homes, and
54 disadvantaged communities as defined by section 75-0101 of this chapter;

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

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

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

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

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

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

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