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:

Section 1. The environmental conservation law is amended by adding a 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.

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

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

3. "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.

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

5. "Mobile source emissions" shall have the same meaning as it does in 40 CFR § 51.491.

§ 74-0103. Indirect source review.

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

2. In 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 emissions 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 truck 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 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 by section 75-0101 of this chapter. When considering alternatives to truck or van trips for incoming or outgoing trips, the warehouse operator will consult impacted and displaced employees in selecting an alternative to truck or van trips and will only utilize such alternative upon agreement with the impacted and displaced employees. In addition to requiring agreement from the impacted and/or displaced employees, if employees in the warehouse have an exclusive bargaining unit representative and the bargaining unit or terms of the collective bargaining agreement is impacted, the warehouse operator will be required to consult and obtain agreement from such representative, in writing, prior to utilizing alternatives.

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

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

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

4. The department shall establish ongoing monitoring and reporting requirements for warehouse operators. Such monitoring shall include but not be limited to periodic desktop and field audits; contacting warehouse owners and operators to request further documentation or clarification on submitted reports; and conducting field visits of the warehouse facilities at any time during regular business hours to verify a facility is following recordkeeping requirements and other applicable requirements. All reports shall be made accessible to the public, in full and unredacted, and posted on a publicly available website. Reporting requirements shall include, but not be limited to, annual reporting of:

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

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

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

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

(e) 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;

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

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

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

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

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

(k) The identity of subcontractors who conduct more than 10% 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

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

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

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

§ 74-0105. Zero-emissions zones study.

Within twelve 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 subdivision one of section 19-0320 of this chapter 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:

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

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

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

4. 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, and disadvantaged communities as defined by section 75-0101 of this chapter;

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

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

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

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

§ 2. This act shall take effect immediately.