STATE OF NEW YORK

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2023-2024 Regular Sessions

IN SENATE

January 18, 2023

Introduced by Sens. GIANARIS, BRISPORT, FERNANDEZ, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, KRUEGER, MAY, MYRIE, SALAZAR, SKOUFIS, 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 -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- 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:

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

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(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.

(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 space, 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 twelve 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 of operation of such vehicles and equipment; anticipated date of implementation; and instructions for training and application for transfer to those positions. In addition to the foregoing notice requirements, if employees in the warehouse have an exclusive bargaining unit representative, the warehouse operator will certify that such representative has agreed in writing to any operational changes that impact the scope of the bargaining unit or bargained-for terms of a collective bargaining agreement then in place, prior to utilizing alternatives.

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

(2) The department shall require applicants to submit information necessary to make such a determination pursuant to subparagraph one of this paragraph, including but not limited to, projected average number of daily vehicle 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 vehicle routes, and an initial air pollution reduction and mitigation plan as provided for in paragraph b of this subdivision.

d. Under the program 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 warehouse 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 and other applicable requirements. All reports shall be made accessible to the public, in full and unredacted except to the extent necessary to keep personal information confidential, and posted on a publicly available website. Reporting requirements shall include, but not be limited to, annual reporting of:

(1) 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;

(2) The average daily vehicle miles traveled for all vehicles making 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 warehouse operators.

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

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;

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

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

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

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

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

d. In the event that the department determines that a program established pursuant to this subdivision is not meeting any applicable requirements under this subdivision, the department shall immediately notify such city of the deficiencies and if, in the determination of the department, the city does not take satisfactory corrective action, the department may take any corrective action it deems appropriate, including but not limited to suspending or terminating the approval contemplated by paragraph a of this subdivision and enforcing the provisions of this section in such city; provided, however, any indirect source pollution law in effect in a city of one million or more as of the effective date of this section may not be found to be failing to meet such applicable requirements for the one-year period following the effective date of this section.

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

§ 2. This act shall take effect immediately.