

# STATE OF NEW YORK

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## 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 -- reported favorably from said committee and committed to the Committee on Finance -- 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.

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

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

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

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

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

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

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

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

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

38 b. (1) In adopting such program and promulgating such rules and regu-  
39 lations, the department shall consider a variety of measures including  
40 but not limited to requiring all warehouse operators to implement an air  
41 pollution reduction and mitigation plan developed or approved by the  
42 department; creating a points system under which warehouse operators  
43 must gain a certain number of points, based on the amount of traffic  
44 that results from their operations, through mitigation measures such as  
45 acquiring and using zero-emissions vehicles, installing and using  
46 on-site electric vehicle charging equipment, using alternatives to truck  
47 or van trips for incoming or outgoing trips, and/or installing solar  
48 electric power generation and battery storage systems; and requiring  
49 enhanced mitigation measures for qualifying warehouses located near  
50 sensitive receptors including but not limited to schools, daycares,  
51 playgrounds, parks, hospitals, senior centers or nursing homes and  
52 disadvantaged communities as defined in subdivision five of section  
53 75-0101 of this chapter.

54 (2) Such rules and regulations shall provide that, when considering  
55 alternatives to truck or van trips for incoming or outgoing trips, the  
56 warehouse operator shall, no less than forty-five and no more than nine-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 3. The department shall impose an annual registration fee for qualify-  
32 ing warehouse operators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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