

STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. MITAYNES, KELLES, R. CARROLL, FORREST, GONZALEZ-ROJAS, MAMDANI, REYES, EPSTEIN, ROZIC, MEEKS, RAGA, ANDERSON, SHRESTHA, LEVENBERG -- read once and referred to the Committee on Environmental Conservation

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:

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

20 (2) Parcel hub. A last mile facility or similar facility whose primary
21 purpose is processing or redistribution of goods for delivery directly
22 to consumers or end-users, by moving a shipment from one mode of trans-

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

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1 port to a vehicle with a rated capacity of less than ten thousand
2 pounds.

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

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

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

16 f. "Warehouse operator" means any entity that conducts day-to-day
17 operations at a heavy distribution warehouse, including operations
18 conducted through the use of third-party contractors. For purposes of
19 clause (i) of subparagraph one of paragraph c of subdivision two of this
20 section, warehouse operator shall include affiliates of such warehouse
21 operator.

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

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

46 (2) Such rules and regulations shall provide that, when considering
47 alternatives to truck or van trips for incoming or outgoing trips, the
48 warehouse operator shall, no less than forty-five and no more than nine-
49 ty days prior to implementation of such alternative, inform impacted
50 employees, in writing, of the proposed change. The warehouse operator
51 shall maintain a record of having provided written notice to impacted
52 employees. The written notice shall include, at minimum: descriptions of
53 the vehicles and equipment to be used; anticipated physical requirements
54 of operation of such vehicles and equipment; anticipated date of imple-
55 mentation; and instructions for training and application for transfer to
56 those positions. In addition to the foregoing notice requirements, if

1 employees in the warehouse have an exclusive bargaining unit represen-
2 tative, the warehouse operator will certify that such representative has
3 agreed in writing to any operational changes that impact the scope of
4 the bargaining unit or bargained-for terms of a collective bargaining
5 agreement then in place, prior to utilizing alternatives.

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

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

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

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

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

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

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

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

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

8 (7) The number of electric vehicle charging stations installed and
9 actual usage;

10 (8) The number of hydrogen fueling stations installed and actual
11 usage;

12 (9) The number of on-site renewable energy generation systems
13 installed;

14 (10) The number of vehicles used to deliver from the site that are
15 owned by the warehouse operator but leased to a third party, and the
16 proportion of leased vehicles used as compared to vehicles owned by the
17 warehouse operator;

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

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

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

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

37 a. Creation of zones restricting deliveries to zero-emissions delivery
38 vehicles only;

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

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

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

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

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

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

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

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

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

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

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

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

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