

STATE OF NEW YORK

3575--B

2025-2026 Regular Sessions

IN ASSEMBLY

January 28, 2025

Introduced by M. of A. MITAYNES, KELLES, R. CARROLL, FORREST, GONZALEZ-ROJAS, MAMDANI, REYES, EPSTEIN, ROZIC, MEEKS, RAGA, ANDERSON, SHRESTHA, LEVENBERG, SIMON, VALDEZ, GALLAGHER, SEPTIMO, SIMONE, HOOKS -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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.

LBD00800-06-5

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 operated by any person, includ-
15 ing for such purposes all affiliates of such person, who in aggregate
16 operates five hundred thousand or more square feet of heavy distribution
17 warehouse space in the state.

18 e. "Warehouse modification" means a change in operations of a ware-
19 house which is likely to result in a significant increase in air
20 pollution.

21 f. "Warehouse operator" means any entity that conducts day-to-day
22 operations at a heavy distribution warehouse, including operations
23 conducted through the use of third-party contractors. For purposes of
24 clause (i) of subparagraph one of paragraph c of subdivision two of this
25 section, warehouse operator shall include affiliates of such warehouse
26 operator. A warehouse operator can be, but is not necessarily, the
27 owner of the warehouse.

28 2. a. No later than eighteen 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 warehouse
13 operator, prior to the commencement of operations at a newly constructed
14 qualifying warehouse or at a facility subject to a warehouse modifica-
15 tion, or any warehouse owner prior to the development of a proposed new
16 qualifying warehouse to be operated by the owner or one or more of its
17 affiliates, to first obtain a permit demonstrating the following:

18 (i) that any additional traffic resulting from operation will not
19 result in a violation of one or more national ambient air quality stand-
20 ards established by the federal environmental protection agency or, if a
21 violation already exists, will not exacerbate such violation, as deter-
22 mined in a manner consistent with the state implementation plan;

23 (ii) that the warehouse operator has not been held by an administra-
24 tive agency or court of competent jurisdiction to be in violation of any
25 indirect source rule which is not inconsistent with the regulation of
26 indirect sources of pollution contemplated by 42 U.S.C. § 7410(a)(5),
27 including pursuant to this section, or any other federal, state or local
28 air quality standards related to its logistics operations, in the two
29 years prior to the date of application, and;

30 (iii) that the qualifying warehouse meets LEED silver, gold or plati-
31 num standards, or a functionally equivalent standard.

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

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

55 (1) The average daily number of inbound and outbound vehicle trips by
56 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 qualify-
30 ing warehouse operators.

31 4. Within eighteen 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;

54 e. Incentives and enforceable measures for low- and zero-emissions
55 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, establishes and implements a program by
12 adopting a local law or ordinance to regulate indirect source pollution
13 from qualifying warehouses in a manner not inconsistent with the regu-
14 lation of indirect source pollution contemplated by 42 U.S.C. §
15 7410(a)(5); provided, however, any such municipal indirect source
16 pollution program shall be, in the determination of the department, at
17 least as stringent as the program established under subdivisions one,
18 two and three of this section and all rules and regulations promulgated
19 pursuant thereto.

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

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

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

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

49 6. Nothing in this section shall be construed to preempt any locality
50 from implementing innovative emissions reduction programs in sustainable
51 freight movement such as Blue Highways and micro-distribution, provided
52 that any such program does not provide an exemption from compliance with
53 this section.

54 § 2. Severability. If any clause, sentence, paragraph, section or part
55 of this act shall be adjudged by any court of competent jurisdiction to
56 be invalid and after exhaustion of all further judicial review, the

1 judgment shall not affect, impair or invalidate the remainder thereof,
2 but shall be confined in its operation to the clause, sentence, para-
3 graph, section or part of this act directly involved in the controversy
4 in which the judgment shall have been rendered.

5 § 3. This act shall take effect on the thirtieth day after it shall
6 have become a law.