

STATE OF NEW YORK

3575--C

2025-2026 Regular Sessions

IN ASSEMBLY

January 28, 2025

Introduced by M. of A. MITAYNES, KELLES, R. CARROLL, FORREST, GONZALEZ-ROJAS, REYES, ROZIC, MEEKS, RAGA, ANDERSON, SHRESTHA, LEVENBERG, SIMON, VALDEZ, GALLAGHER, SEPTIMO, SIMONE, TORRES, RAMOS, SCHIAVONI, CRUZ, LASHER, EACHUS, LUNSFORD, OTIS, STIRPE, BURDICK, SHIMSKY, HOOKS, ROSENTHAL, GIBBS, DINOWITZ, KASSAY, DAVILA, HEVESI, McDONALD, COLTON, BORES, WALKER, McMAHON, MORENO -- 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 -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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-

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

LBD00800-08-6

1 tially all of the assets of a person, whether through the ownership of
2 voting securities, by contract, or otherwise.

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

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

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

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

16 d. "Qualifying warehouse" means any heavy distribution warehouse that
17 is fifty thousand square feet or greater, whether as originally
18 constructed or as modified, or which is operated by any person, includ-
19 ing for such purposes all affiliates of such person, who in aggregate
20 operates five hundred thousand or more square feet of heavy distribution
21 warehouse space in the state.

22 e. "Warehouse modification" means a change in operations of a ware-
23 house which is likely to result in a significant increase in air
24 pollution.

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

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

40 b. (1) In adopting such program and promulgating such rules and regu-
41 lations, the department shall consider a variety of measures including
42 but not limited to requiring all warehouse operators to implement an air
43 pollution reduction and mitigation plan developed or approved by the
44 department; creating a points system under which warehouse operators
45 must gain a certain number of points, based on the amount of traffic
46 that results from their operations, through mitigation measures such as
47 acquiring and using zero-emissions vehicles, installing and using
48 on-site electric vehicle charging equipment, using alternatives to truck
49 or van trips for incoming or outgoing trips, and/or installing solar
50 electric power generation and battery storage systems; and requiring
51 enhanced mitigation measures for qualifying warehouses located near
52 sensitive receptors including but not limited to schools, daycares,
53 playgrounds, parks, hospitals, senior centers or nursing homes and
54 disadvantaged communities as defined in subdivision five of section
55 75-0101 of this chapter.

1 (2) Such rules and regulations shall provide that, when considering
2 alternatives to truck or van trips for incoming or outgoing trips, the
3 warehouse operator shall, no less than forty-five and no more than nine-
4 ty days prior to implementation of such alternative, inform impacted
5 employees, in writing, of the proposed change. The warehouse operator
6 shall maintain a record of having provided written notice to impacted
7 employees. The written notice shall include, at minimum: descriptions of
8 the vehicles and equipment to be used; anticipated physical requirements
9 of operation of such vehicles and equipment; anticipated date of imple-
10 mentation; and instructions for training and application for transfer to
11 those positions. In addition to the foregoing notice requirements, if
12 employees in the warehouse have an exclusive bargaining unit represen-
13 tative, the warehouse operator will certify that such representative has
14 agreed in writing to any operational changes that impact the scope of
15 the bargaining unit or bargained-for terms of a collective bargaining
16 agreement then in place, prior to utilizing alternatives.

17 c. (1) Under the program, the department shall require any warehouse
18 operator, prior to the commencement of operations at a newly constructed
19 qualifying warehouse or at a facility subject to a warehouse modifica-
20 tion, or any warehouse owner prior to the development of a proposed new
21 qualifying warehouse to be operated by the owner or one or more of its
22 affiliates, to first obtain a permit demonstrating the following:

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

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

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

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

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

1 personal information confidential, and posted on a publicly available
2 website. Reporting requirements shall include, but not be limited to,
3 annual reporting of:

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

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

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

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

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

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

18 (7) The number of electric vehicle charging stations installed and
19 actual usage;

20 (8) The number of hydrogen fueling stations installed and actual
21 usage;

22 (9) The number of on-site renewable energy generation systems
23 installed;

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

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

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

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

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

47 a. Creation of zones restricting deliveries to zero-emissions delivery
48 vehicles only;

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

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

53 d. Prioritization of low- and zero-emissions zones within disadvan-
54 tagged communities identified under article seventy-five of this chapter;
55 nonattainment zones under the national ambient air quality standards set
56 by the federal environmental protection agency in 42 U.S.C. 7401; and

1 other vulnerable areas including areas proximate to schools, daycares,
2 playgrounds, parks, hospitals, senior centers or nursing homes;

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

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

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

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

11 5. a. The provisions of subdivisions one, two and three of this
12 section shall not apply in a city with a population of one million or
13 more that pursuant to local law or ordinance establishes a warehouse
14 indirect source pollution program prior to the adoption of regulations
15 by the department pursuant to this section. Any city with a population
16 of one million or more that implements such a warehouse indirect source
17 pollution program shall report annually to the department any data
18 points that the department may require by rule or regulation.

19 b. The exemption contemplated by this subdivision may not be construed
20 as an exemption from compliance with any other law, rule, regulation,
21 decision or order.

22 c. For purposes for this subdivision, the following terms shall have
23 the following meanings:

24 (1) "Indirect source" means a facility that attracts, or may attract,
25 mobile sources of pollution.

26 (2) "Warehouse indirect source pollution program" means the facility-
27 by-facility review of certain warehouses that are indirect sources of
28 air pollution, including measures to reduce the attraction of mobile
29 sources of air pollution, the emissions from which would cause or
30 contribute to air pollution concentrations of particulate matter and
31 nitrogen oxides.

32 (3) "Warehouse" means a building that stores cargo, goods, or products
33 on a short- or long-term basis for later distribution to businesses or
34 retail customers.

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

40 § 2. Severability. If any clause, sentence, paragraph, section or part
41 of this act shall be adjudged by any court of competent jurisdiction to
42 be invalid and after exhaustion of all further judicial review, the
43 judgment shall not affect, impair or invalidate the remainder thereof,
44 but shall be confined in its operation to the clause, sentence, para-
45 graph, section or part of this act directly involved in the controversy
46 in which the judgment shall have been rendered.

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