

# STATE OF NEW YORK

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## IN SENATE

January 8, 2025

Introduced by Sens. GIANARIS, BRISPORT, FERNANDEZ, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, KRUEGER, MAY, MYRIE, RAMOS, SALAZAR, SERRANO, 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 -- 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 -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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-

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

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1 ly, of the power to direct or cause the direction of (1) the management  
2 and policies of a person, (2) the operation of a person, or (3) substan-  
3 tially all of the assets of a person, whether through the ownership of  
4 voting securities, by contract, or otherwise.

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

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

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

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

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

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

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

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

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

1 disadvantaged communities as defined in subdivision five of section  
2 75-0101 of this chapter.

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

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

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

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

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

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

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

1 applicable requirements. All reports shall be made accessible to the  
2 public, in full and unredacted except to the extent necessary to keep  
3 personal information confidential, and posted on a publicly available  
4 website. Reporting requirements shall include, but not be limited to,  
5 annual reporting of:

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

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

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

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

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

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

20 (7) The number of electric vehicle charging stations installed and  
21 actual usage;

22 (8) The number of hydrogen fueling stations installed and actual  
23 usage;

24 (9) The number of on-site renewable energy generation systems  
25 installed;

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

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

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

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

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

49 a. Creation of zones restricting deliveries to zero-emissions delivery  
50 vehicles only;

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

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

55 d. Prioritization of low- and zero-emissions zones within disadvan-  
56 tagged communities identified under article seventy-five of this chapter;

1 nonattainment zones under the national ambient air quality standards set  
2 by the federal environmental protection agency in 42 U.S.C. 7401; and  
3 other vulnerable areas including areas proximate to schools, daycares,  
4 playgrounds, parks, hospitals, senior centers or nursing homes;

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

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

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

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

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

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

24 c. For purposes for this subdivision, the following terms shall have  
25 the following meanings:

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

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

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

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

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

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