

SENATE, No. 3546

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED SEPTEMBER 12, 2024

Sponsored by:

Senator JOHN F. MCKEON

District 27 (Essex and Passaic)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Requires certain high-traffic facilities to obtain permit from DEP and annually implement measures to reduce air pollution caused by facility.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/12/2024)

1 AN ACT concerning indirect air pollution from certain facilities and
2 supplementing Title 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. The Legislature finds and declares that:

8 (1) Air pollution disproportionately impacts overburdened
9 communities, and that without concerted action, air pollution could
10 worsen in overburdened communities, even as Statewide emissions
11 decline or stay the same;

12 (2) Air pollution levels vary greatly within towns and even
13 neighborhoods, and the variation is missed by standard monitoring
14 techniques;

15 (3) Truck traffic contributes disproportionately to air pollution,
16 so targeting high-traffic locations for emissions reductions would
17 allow for a greater air pollution mitigation and the concomitant
18 health benefits at a lower cost than Statewide air pollution reduction
19 measures;

20 (4) Facilities that generate high truck traffic, such as
21 warehouses, are already having significant impacts in overburdened
22 communities and those impacts are growing rapidly; and

23 (5) The federal "Clean Air Act" expressly reserves existing State
24 authority to regulate mobile sources that congregate at facilities.

25 b. The Legislature therefore determines that it is in the public
26 interest for the State to implement an indirect source review
27 program, in order to target and mitigate air pollution from high-
28 traffic locations in the State, particularly those in overburdened
29 communities.

30

31 2. As used in this act:

32 "Defeat device" means any part or component intended for use
33 with, or as part of, any motor vehicle or motor vehicle engine,
34 where a principal effect of the part or component is to bypass,
35 defeat, or render inoperative any device or element of design
36 installed on or in a motor vehicle or motor vehicle engine in
37 compliance with State or federal air pollution laws.

38 "Department" means the Department of Environmental
39 Protection.

40 "Federal Reference Method" means an air pollution monitoring
41 technique that has been tested and approved as a Federal Reference
42 Method by the United States Environmental Protection Agency.

43 "Hoteling" means the practice, by drivers of long-haul trucks, of
44 resting while leaving the truck's engine running.

45 "Minimum Efficiency Reporting Value," or "MERV" means a
46 measurement scale used to rate the effectiveness of air filters.

47 "Operator" means the person who conducts day-to-day
48 operations at a regulated facility, either with its employees or

1 through the contracting out of services for all or part of the
2 regulated facility operations.

3 "Owner" means a legal, beneficial, or equitable owner of a
4 regulated facility.

5 "Overburdened community" means the same as the term is
6 defined in section 2 of P.L.2020, c.92 (C.13:1D-158).

7 "Regulated facility" means (1) a facility used for the purpose of
8 goods distribution, whether leased or used as a proprietary facility,
9 which has 100,000 square feet or more of business area; (2) a
10 facility located in an overburdened community and used for the
11 purpose of goods distribution, whether leased or used as a
12 proprietary facility, which has 50,000 square feet or more of
13 business area; or (3) a facility that generates 50 or more truck trips
14 per day, including a port or any part of a port.

15 "Truck count" means an accounting of the number of trucks
16 traveling through a designated intersection.

17 "Truck trip" means a one-way trip a truck or tractor makes to or
18 from a facility.

19

20 3. a. No later than 12 months after the effective date of this act,
21 the Department of Environmental Protection shall establish an
22 indirect source review program for regulated facilities. The goal of
23 the program shall be to reduce air pollution emissions from
24 regulated facilities to zero by 2050.

25 b. The owner or operator of each regulated facility shall obtain,
26 and abide by the terms of, an indirect source air pollution permit
27 issued by the department pursuant to this act. A regulated facility
28 shall not operate without possession of an indirect source air
29 pollution permit issued by the department. A newly constructed
30 regulated facility shall not commence operations without first
31 obtaining an indirect source air pollution permit. Any time a
32 regulated facility carries out a major modification of the facility or
33 its operations, as defined in rules and regulations adopted by the
34 department pursuant to section 9 of this act, the owner or operator
35 of the regulated facility shall obtain a new indirect source air
36 pollution permit.

37 c. A permit for a regulated facility located in an overburdened
38 community shall have a duration of three years. A permit for a
39 regulated facility not located in an overburdened community shall
40 have a duration of five years.

41 d. No permit or permit renewal shall be issued to a regulated
42 facility unless the owner or operator thereof pays the permit fee
43 required by section 6 of this act, and demonstrates to the
44 department, in a manner and form determined by the department,
45 the facility's ability to meet its air pollution mitigation compliance
46 obligations, as determined by the department pursuant to section 4
47 of this act.

- 1 e. The department shall consider the following factors or
2 information when issuing and renewing permits, revoking permits,
3 and imposing permit conditions:
- 4 (1) the cumulative impact of air pollution on residents and
5 workers within a half mile of the regulated facility;
 - 6 (2) whether the facility is located within one half-mile of an
7 overburdened community;
 - 8 (3) air pollution monitoring data, including Federal Reference
9 Method, fence-line, and satellite data;
 - 10 (4) the results of any inspections of the facility;
 - 11 (5) whether the regulated facility is in compliance with its air
12 pollution reduction plan compliance obligation, if applicable; and
 - 13 (6) the modeled emissions rates for the facility's activities,
14 integrating inputs such as truck counts and onsite activities such as
15 idling, as calculated by the department.
- 16 f. The department shall establish a community-prompted permit
17 review protocol for regulated facilities. A municipal government,
18 or other community representative organization, of an overburdened
19 community may petition the department to review the permit for a
20 regulated facility. The department shall initiate a permit review
21 process if the petitioner presents compelling quantitative or
22 qualitative evidence that the regulated facility is contributing to the
23 cumulative air pollution burden of the overburdened community.
24 After the review, the department may revoke, or impose additional
25 conditions on the facility's permit, as it deems appropriate.
- 26 g. The provisions of each permit issued by the department
27 pursuant to this act shall require the regulated facility to reduce its
28 air pollution emissions to zero by 2050 through truck electrification,
29 the use of on-site solar power generation, battery storage, and
30 managed charging systems, or other means.
- 31 h. The department may revoke or revise a regulated facility's
32 permit if it finds that the facility is not in compliance with the
33 provisions of this act.
- 34 i. The department may, in its discretion, require that the
35 provisions of a permit issued to a regulated facility located in, or
36 within a half-mile of, an overburdened community include more
37 stringent air pollution mitigation requirements than that of an
38 equivalent facility not in or near an overburdened community.
39
- 40 4. a. A permit issued pursuant to this act shall require the
41 regulated facility to implement an annual points compliance
42 obligation of air pollution mitigation measures, determined by the
43 department using a points-based accounting system. Points shall be
44 awarded for measures including, but not limited to:
- 45 (1) purchasing battery-electric trucks;
 - 46 (2) purchasing and using battery-electric forklifts, yard trucks, or
47 other on-site equipment;

- 1 (3) using battery-electric trucks at the regulated facility or in
2 truck trips to or from the regulated facility;
 - 3 (4) purchasing and using electric vehicle charging infrastructure;
 - 4 (5) using alternatives to truck trips to or from the regulated
5 facility, such as the use of light duty electric vehicles or electric
6 ferries;
 - 7 (6) installing on-site solar power generation, electricity storage,
8 or managed charging systems;
 - 9 (7) installing and maintaining MERV 16 or greater filters
10 systems in schools, daycares, hospitals, community centers, or
11 residences located within one-half mile of the regulated facility;
 - 12 (8) eliminate cooking, heating, hot water, or generator
13 combustion emissions by replacing appliances and equipment at the
14 regulated facility or at buildings located within one-half mile of a
15 regulated facility; and
 - 16 (9) reduce transport emissions for regulated facilities and their
17 surrounding areas by implementing and maintaining bicycle- or
18 electric vehicle-share programs.
- 19 b. The owner or operator of a regulated facility shall not sell, or
20 otherwise transfer, an annual mitigation point to a another regulated
21 facility.
- 22 c. If the owner or operator of regulated facility operator earns
23 more points than is required for the annual points compliance
24 obligation in a given reporting period, the remaining points may be
25 used at the same regulated facility to satisfy a points compliance
26 obligation in any of the following three years, provided that the
27 owner or operator demonstrates that any improvements or
28 equipment installations that were used to earn the points being
29 transferred are still operational at that regulated facility in the year
30 during which the points are used.
- 31 d. Points earned during the three years prior to a regulated
32 facility's first compliance period may be banked and transferred up
33 to three years after the regulated facility operator's first compliance
34 period, provided that the measures taken to earn the points are
35 documented in an annual report for the year in which the measure
36 was completed.
- 37 e. A regulated facility that regularly causes truck trips to or from
38 a port or an overburdened community, or that is located at a port,
39 shall have an annual points compliance obligation that is 25 percent
40 higher than that of an equivalent facility that does not meet these
41 conditions.
- 42 f. An owner or operator of a regulated facility that seeks to earn
43 compliance points by using alternatives to truck trips pursuant to
44 paragraph (5) of subsection a. of this section shall first consult
45 impacted and displaced workers in selecting an alternative to truck
46 trips and shall only use an alternative upon agreement with a
47 majority of the impacted and displaced workers. If employees in a
48 regulated facility have an exclusive bargaining unit representative

1 and the bargaining unit or the terms of the collective bargaining
2 agreement would be impacted by the use of an alternative, then the
3 operator shall consult with and obtain agreement from the
4 employees who are impacted, displaced, or both, and the
5 representative, in writing, before using the alternative.

6
7 5. a. The department shall annually conduct truck counting on a
8 representative sample of roads adjacent to regulated facilities.
9 Truck counting shall include the class and age of truck and be
10 conducted in consultation with appropriate community and
11 environmental justice organizations, if possible.

12 b. The department shall annually conduct monitoring of idling
13 and hoteling activities at a representative sample of regulated
14 facilities.

15 c. The department shall annually conduct an inspection of at
16 least 10 percent of the regulated facilities located in overburdened
17 communities, and at least five percent of all other regulated
18 facilities, using a randomized selection process.

19 d. In addition to the inspections required by subsection c. of this
20 section, the department shall annually inspect each regulated
21 facility in a location within one-half mile of which 500 more
22 children under the age of six reside.

23 e. The municipal government of, or a community organization
24 representing, an overburdened community may petition the
25 department to inspect a regulated facility. The department shall
26 grant the petition if the petitioner presents compelling evidence that
27 the regulated facility is violating the provisions of its permit.

28 f. An inspection carried out pursuant to this section shall
29 include:

30 (1) fence-line monitoring for at least one month of each season
31 for one year;

32 (2) an analysis of satellite data;

33 (3) monitoring of land use, on-site combustion, truck counts and
34 ages, idling and hoteling duration, and other emissions sources;

35 (4) the identification of defeat devices;

36 (5) a determination of the annual emissions rate for criteria air
37 pollutants from the regulated facility and the expected concentration
38 increases of criteria air pollutants caused by the regulated facility at
39 distances of one-half mile and one mile; and

40 (6) in the case of an inspection carried out pursuant to subsection
41 e. of this section, any other metrics identified by the petitioner.

42
43 6. a. The department shall establish and charge the owners or
44 operators of regulated facilities an annual permit fee. The
45 department may make the amount of the fee proportional to the
46 regulated facility's total emissions of all regulated air contaminants
47 excluding greenhouse gases. The overall amount of the annual fee
48 shall be sufficient to cover the department's costs in implementing

1 the provisions of this act, including air monitoring activities and
2 truck counting activities. For the first annual permit fee only, the
3 department shall require an owner or operator of the regulated
4 facility to pay an additional amount that is sufficient, in the
5 department's estimation, to fund the cleanup and restoration of the
6 regulated facility and its land once the regulated facility is no longer
7 in commercial operation for longer than one year.

8 b. The department may establish a grant program to distribute
9 any excess funds collected under this section to mitigate health
10 impacts on residents caused by regulated facilities, reimburse
11 residents for health care expenses caused by regulated facilities, or
12 to fund community health facilities or initiatives to respond to air
13 pollution caused by regulated facilities.

14

15 7. a. In addition to any requirements under the "Administrative
16 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or the "Air
17 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
18 the department shall provide the following for permits issued
19 pursuant to this act:

20 (1) public notice of the submission of permit applications,
21 renewals, or revisions;

22 (2) a post, in machine-readable format on a public website
23 accessible to search engines, that contains the full permit
24 application, the draft and final findings by the consulted agencies,
25 and the agencies' response to comments, for each permit;

26 (3) a public hearing and an opportunity for the submission of
27 public comments prior to the issuance or renewal of a permit; and

28 (4) a summary and response of the comments prepared by the
29 consulted agencies.

30 b. The department shall post, and regularly update, the State's
31 progress on the reduction of air pollution emissions from regulated
32 facilities on its Internet website.

33 c. The department shall post on its Internet website a list of
34 regulated facilities, which includes the following information:

35 (1) the facility's latitude and longitude;

36 (2) the facility's square footage;

37 (3) the operator's name;

38 (4) the owner's name;

39 (5) any secured lender of the facility's name, if applicable;

40 (6) the number of truck bays at the facility;

41 (7) the facility's compliance status under this act;

42 (8) any documented labor violations at the facility, if applicable;

43 (9) the number of electric vehicle charging stations installed at
44 the facility, and their actual usage;

45 (10) the number of on-site renewable energy generation systems
46 installed at the facility;

47 (11) the number of vehicles used to deliver materials or goods
48 from the facility that are owned by the operator but leased to a

- 1 third-party, the proportion of those vehicles that are leased, and the
2 proportion that are owned by the operator;
- 3 (12) the average daily number of inbound and outbound truck
4 trips by vehicle weight and class, by time of day, and by day of the
5 week; the average daily number of inbound and outbound truck
6 trips to and from ports by vehicle weight and class, by time of day,
7 and by day of the week, the average daily vehicle miles traveled for
8 all vehicles making inbound and outbound trips; and the average
9 daily number of inbound and outbound truck trips associated with
10 trucks with refrigeration units;
- 11 (13) the total number of residents under five or over 65 years of
12 age who reside within one-half mile of the facility and the race and
13 ethnicity of residents who reside within one-half mile of the
14 facility;
- 15 (14) the annual profit of the facility;
- 16 (15) the State and federal tax incentives received by the facility,
17 if applicable;
- 18 (16) the number of jobs at the facility, including drivers and
19 others employed by third-party contractors, with a breakdown of the
20 percentage of part-time and full-time employees, independent
21 contractors, unionized, and non-union employees;
- 22 (17) the percentage of vehicles used, specifying on-road vehicles
23 and off-road vehicles as well as weight and vehicle class, that are
24 zero emissions;
- 25 (18) the identity of subcontractors who conduct more than 10
26 percent of total delivery vehicle trips from the facility, including the
27 entity name, principal officers, business address, contact
28 information, and total number of employees;
- 29 (19) the expected costs of clean up and restoration of the land
30 and buildings of the regulated facility in the event that it ceases
31 commercial operations; and
- 32 (20) any other information necessary to effectively implement
33 and enforce the provisions of this act.
- 34 d. The owner or operator of each regulated facility shall submit
35 an annual report to the department that contains the information
36 enumerated in subsection c. of this section.
- 37 e. The department shall issue an annual report to the Governor
38 and to the Legislature pursuant to section 2 of P.L.1991, c.164
39 (C.52:14-19.1), which contains quantitative and qualitative data
40 regarding regulated facility impact in the state, including data on
41 impacts on health, educational attainment, labor force participation
42 and productivity, tax base, and contribution to flood risk.
- 43
- 44 8. a. Whenever the Commissioner of Environmental Protection
45 finds that a person has violated any provision of this act, or any rule
46 or regulation adopted pursuant thereto, or knowingly makes a false
47 statement, representation, or certification in any application, record,

1 plan, or other document filed or required to be maintained pursuant
2 to this act, the commissioner may:

3 (1) issue an order requiring the person found to be in violation
4 to comply in accordance with subsection b. of this section;

5 (2) bring a civil action in accordance with subsection c. of this
6 section;

7 (3) levy a civil administrative penalty in accordance with
8 subsection d. of this section; or

9 (4) bring an action for a civil penalty in accordance with
10 subsection e. of this section.

11 b. Whenever the commissioner finds that a person has violated
12 this act, or any rule or regulation adopted pursuant thereto, the
13 commissioner may issue an administrative enforcement order
14 specifying the provision or provisions of this act, or the rule or
15 regulation adopted pursuant thereto, of which the person is in
16 violation, citing the action that constituted the violation, requiring
17 compliance with the provision violated, and giving notice to the
18 person of the person's right to a hearing on the matters contained in
19 the administrative enforcement order. The ordered person shall
20 have 20 calendar days from receipt of the order within which to
21 deliver to the commissioner a written request for a hearing. After
22 the hearing and upon finding that a violation has occurred, the
23 commissioner may issue a final order. If no hearing is requested,
24 the order shall become final after the expiration of the 20-day
25 period. A request for hearing shall not automatically stay the effect
26 of the order.

27 c. The commissioner is authorized to institute a civil action in
28 Superior Court for appropriate relief from any violation of the
29 provisions of this act, or any rule or regulation adopted thereof.
30 Such relief may include, singly or in combination:

31 (1) a temporary or permanent injunction;

32 (2) recovery of reasonable costs of any investigation or
33 inspection which led to the discovery of the violation, and for the
34 reasonable costs of preparing and bringing a civil action
35 commenced under this subsection;

36 (3) recovery of reasonable costs incurred by the State in
37 removing, correcting, or terminating the adverse effects resulting
38 from any violation of the provisions of this act, or any rule or
39 regulation adopted pursuant thereto, for which a civil action has
40 been commenced and brought under this subsection;

41 (4) recovery of compensatory damages caused by a violation of
42 the provisions of this act, or any rule or regulation adopted, for
43 which a civil action has been commenced and brought under this
44 subsection. Assessments under this subsection shall be paid to the
45 State Treasurer, except that compensatory damages may be paid by
46 specific order of the court to any persons who have been aggrieved
47 by the violation.

1 d. The commissioner is authorized to assess a civil
2 administrative penalty of not less than \$10,000 nor more than
3 \$20,000 for each violation, provided that each day during which the
4 violation continues shall constitute an additional, separate and
5 distinct offense.

6 In assessing a civil administrative penalty, the commissioner shall
7 consider the severity of the violation, the measures taken to prevent
8 further violations, and whether the penalty will maintain an
9 appropriate deterrent. Prior to assessment of a civil administrative
10 penalty, the person committing the violation shall be notified by
11 certified mail or personal service that the penalty is being assessed.
12 The notice shall identify the section of the statute, rule, regulation,
13 or order violated; recite the facts alleged to constitute a violation;
14 state the basis for the amount of the civil administrative penalties to
15 be assessed; and affirm the rights of the alleged violator to a
16 hearing. The ordered party shall have 35 days from receipt of the
17 notice within which to deliver to the commissioner a written request
18 for a hearing. After the hearing and upon finding that a violation
19 has occurred, the commissioner may issue a final order after
20 assessing the amount of the fine specified in the notice. If no
21 hearing is requested, the notice shall become a final order after the
22 expiration of the 35-day period. Payment of the assessment is due
23 when a final order is issued or the notice becomes a final order.
24 The authority to levy an administrative order is in addition to all
25 other enforcement provisions in this act, and the payment of any
26 assessment shall not be deemed to affect the availability of any
27 other enforcement provisions in connection with the violation for
28 which the assessment is levied. The department may compromise
29 any civil administrative penalty assessed under this section in an
30 amount and with conditions the department determines appropriate.

31 e. A person who violates any provision of this act, or any rule or
32 regulation adopted pursuant thereto, or an administrative order
33 issued pursuant to subsection b. of this section, or a court order
34 issued pursuant to subsection c. of this section, or who fails to pay a
35 civil administrative penalty in full pursuant to subsection d. of this
36 section, or who knowingly makes any false or misleading statement
37 on any application, record, report, or other document required to be
38 submitted to the department, shall be subject, upon order of a court,
39 to a civil penalty not to exceed \$20,000 per day of the violation, and
40 each day during which the violation continues shall constitute an
41 additional, separate, and distinct offense. Any civil penalty
42 imposed pursuant to this subsection may be collected with costs in a
43 summary proceeding pursuant to the "Penalty Enforcement Law of
44 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or may be collected in
45 a civil action commenced by the commissioner. In addition to any
46 penalties, costs or interest charges, the Superior Court, or the
47 municipal court as the case may be, may assess against the violator

1 the amount of economic benefit accruing to the violator from the
2 violation.

3 f. Pursuit of any of the remedies specified under this section
4 shall not preclude the seeking of any other remedy specified.

5
6 9. The Department of Environmental Protection shall, in
7 accordance with the "Administrative Procedure Act," P.L.1968,
8 c.410 (C.52:14B-1 et seq.). adopt rules and regulations as necessary
9 to implement this act.

10

11 10. This act shall take effect immediately.

12

13

14

STATEMENT

15

16 This bill would establish a program in the Department of
17 Environmental Protection (DEP) to require certain high-traffic
18 facilities to obtain a permit from the DEP and annually implement
19 measures to reduce air pollution caused by the facility.

20 Specifically, the bill would apply to "regulated facilities,"
21 defined by the bill as (1) a facility used for the purpose of goods
22 distribution, whether leased or used as a proprietary facility, which
23 has 100,000 square feet or more of business area; (2) a facility
24 located in an overburdened community and used for the purpose of
25 goods distribution, whether leased or used as a proprietary facility,
26 which has 50,000 square feet or more of business area; or (3) a
27 facility that generates 50 or more truck trips per day, including a
28 port or any part of a port.

29 The bill would require each owner or operator of a regulated
30 facility to obtain, and abide by the terms of, an indirect source air
31 pollution permit issued by the DEP. A newly constructed regulated
32 facility would not be allowed to commence operations without first
33 obtaining an indirect source air pollution permit issued by the DEP.
34 The goal of the indirect source air pollution permit program would
35 be to reduce air pollution from regulated facilities to zero by the
36 year 2050.

37 Each permit would require the regulated facility to implement an
38 annual quota of air pollution mitigation measures, determined by
39 the DEP using a points-based accounting system. Points would be
40 awarded for measures, as enumerated in subsection a. of section 4
41 of the bill, including purchasing battery-electric trucks, purchasing
42 and using battery-electric forklifts, yard trucks, or other on-site
43 equipment and using battery-electric trucks at the regulated facility
44 or in truck trips to or from the regulated facility. Persons who
45 violate the bill's provisions could be liable for civil administrative
46 penalties of between \$10,000 and \$20,000 per violation, and civil
47 penalties of up to \$20,000 per violation.

1 In order to monitor compliance with the bill's provisions, the bill
2 would require the DEP to annually conduct truck counting on a
3 representative sample of roads adjacent to regulated facilities, and
4 to annually conduct monitoring of idling and hoteling activities at a
5 representative sample of regulated facilities. In addition, the DEP
6 would be required to annually conduct an inspection of at least 10
7 percent of the regulated facilities located in overburdened
8 communities, and at least five percent of all other regulated
9 facilities, using a randomized selection process.

10 The bill would require owners or operators of regulated facilities
11 to pay an annual permit fee, which would be set at a level sufficient
12 to cover the DEP's administrative costs in implementing the bill's
13 provisions. The first annual permit fee paid by a regulated facility
14 would also include an amount sufficient to fund the cleanup and
15 restoration of the facility and its land once the facility is no longer
16 in commercial operation for longer than one year.

17 The DEP would be required to provide certain public
18 notifications under the permit program, including public notice of
19 the submission of permit applications, renewals, or revisions, and
20 the full permit application, the draft and final findings by the
21 consulted agencies, and the agencies' response to comments, for
22 each permit. Finally, the bill would require the DEP to post a list of
23 regulated facilities, along with certain items of information
24 enumerated in subsection c. of section 7 of the bill, on its website,
25 and to submit an annual report on the program established by the
26 bill to the Governor and the Legislature.