

A03575 Text:

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, SHRES-THA, 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 Assem-

bly, 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.

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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
5 facility whose primary
6 purpose is processing or redistribution of goods
7 for delivery directly
8 to consumers or end-users, by moving a shipment
9 from one mode of trans-
10 port to a vehicle with a rated capacity of
11 less than ten thousand
12 pounds.

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

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

29 e. "Warehouse modification" means a change in
30 operations of a ware-
31 house which is likely to result in a
32 significant increase in air
33 pollution.

34 f. "Warehouse operator" means any entity
35 that conducts day-to-day
36 operations at a heavy distribution warehouse,
37 including operations
38 conducted through the use of third-party
39 contractors. For purposes of
40 clause (i) of subparagraph one of paragraph c of
41 subdivision two of this
42 section, warehouse operator shall include
43 affiliates of such warehouse
44 operator. A warehouse operator can be, but is
45 not necessarily, the
46 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
51 subdivision five of section
52 75-0101 of this chapter.
53 (2) Such rules and regulations shall provide
54 that, when considering
55 alternatives to truck or van trips for incoming or
56 outgoing trips, the
57 warehouse operator shall, no less than forty-five
58 and no more than nine-
59 ty days prior to implementation of such
60 alternative, inform impacted
61 employees, in writing, of the proposed change. The
62 warehouse operator

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63 shall maintain a record of having provided
64 written notice to impacted
65 employees. The written notice shall include, at
66 minimum: descriptions of
67 the vehicles and equipment to be used; anticipated
68 physical requirements
69 of operation of such vehicles and equipment;
70 anticipated date of imple-
71 mentation; and instructions for training and
72 application for transfer to
73 those positions. In addition to the foregoing
74 notice requirements, if
75 employees in the warehouse have an exclusive
76 bargaining unit represen-
77 tative, the warehouse operator will certify that
78 such representative has
79 agreed in writing to any operational changes that
80 impact the scope of
81 the bargaining unit or bargained-for terms of a
82 collective bargaining
83 agreement then in place, prior to utilizing
84 alternatives.

85 c. (1) Under the program, the department shall
86 require any warehouse
87 operator, prior to the commencement of operations
88 at a newly constructed
89 qualifying warehouse or at a facility subject to
90 a warehouse modifica-

15 tion, or any warehouse owner prior to the
16 development of a proposed new
17 qualifying warehouse to be operated by the owner
18 or one or more of its
19 affiliates, to first obtain a permit demonstrating
20 the following:
21 (i) that any additional traffic resulting from
22 operation will not
23 result in a violation of one or more national
24 ambient air quality stand-
25 ards established by the federal environmental
26 protection agency or, if a
27 violation already exists, will not exacerbate such
28 violation, as deter-
29 mined in a manner consistent with the state
30 implementation plan;
31 (ii) that the warehouse operator has not been
32 held by an administra-
33 tive agency or court of competent jurisdiction to
34 be in violation of any
35 indirect source rule which is not inconsistent
36 with the regulation of
37 indirect sources of pollution contemplated by 42
38 U.S.C. § 7410(a)(5),
39 including pursuant to this section, or any other
40 federal, state or local
41 air quality standards related to its logistics
42 operations, in the two
43 years prior to the date of application, and;
44 (iii) that the qualifying warehouse meets LEED
45 silver, gold or plati-
46 num standards, or a functionally equivalent
47 standard.
48 (2) The department shall require applicants
49 to submit information
50 necessary to make such a determination pursuant to
51 subparagraph one of
52 this paragraph, including but not limited to,
53 projected average number
54 of daily vehicle trips and primary routes to the
55 facility, a study of
56 potential traffic and congestion impacts,
57 identification of all sensi-

37 tive receptors, including but not limited to,
38 schools, daycares, play-
39 grounds, parks, hospitals, senior centers or
40 nursing homes and disadvan-
41 taged communities as defined by section 75-0101
42 of this chapter, near
43 the proposed warehouse or near the primary
44 vehicle routes, and an
45 initial plan for compliance with paragraph b of
46 this subdivision in a
47 form prescribed by the department.

48 d. Under the program the department shall
49 establish ongoing monitoring
50 and reporting requirements for qualifying
51 warehouse operators. Such
52 monitoring shall include but not be limited to
53 periodic desktop and
54 field audits; contacting warehouse owners and
55 warehouse operators to
56 request further documentation or clarification on
57 submitted reports; and
58 conducting field visits of the warehouse facilities
59 during regular busi-
60 ness hours to verify a facility is following
61 recordkeeping and other
62 applicable requirements. All reports shall be made
63 accessible to the
64 public, in full and unredacted except to the
65 extent necessary to keep
66 personal information confidential, and posted on a
67 publicly available
68 website. Reporting requirements shall include,
69 but not be limited to,
70 annual reporting of:
71 (1) The average daily number of inbound and
72 outbound vehicle trips by
73 vehicle weight and class, and by time of day and
74 day of the week;

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75 (2) The average daily vehicle miles traveled
76 for all vehicles making
77 inbound and outbound trips to and from the
78 qualifying warehouse;

3 (3) The average daily vehicle miles traveled and
4 number of inbound and
5 outbound trips for alternative modes of freight;
6 (4) A heat map of the frequency data for trip
7 destinations;
8 (5) The number of jobs at the facility,
9 including drivers and others
10 employed by third-party contractors, with a
11 breakdown of percentage of
12 part-time and full-time employees, independent
13 contractors, unionized
14 and non-union employees;
15 (6) The percentage of vehicles used, specifying
16 on-road vehicles and
17 off-road vehicles as well as weight and vehicle
18 class, that are zero
19 emissions;
20 (7) The number of electric vehicle charging
21 stations installed and
22 actual usage;
23 (8) The number of hydrogen fueling stations
24 installed and actual
25 usage;
26 (9) The number of on-site renewable energy
27 generation systems
28 installed;
29 (10) The number of vehicles used to deliver
30 from the site that are
31 owned by the warehouse operator but leased to a
32 third party, and the
33 proportion of leased vehicles used as compared to
34 vehicles owned by the
35 warehouse operator;
36 (11) The identity of subcontractors who conduct
37 more than ten percent
38 of total delivery vehicle trips from the site,
39 including the entity
40 name, principal officers, business address and
41 contact information, and
42 total number of employees; and
43 (12) Any other information necessary to
44 effectively implement and
45 enforce any rule or regulation promulgated pursuant
46 to this section.

29 3. The department shall impose an annual
30 registration fee for qualify-
31 ing warehouse operators.
32 4. Within eighteen months of the effective date
33 of this section, the
34 department shall complete a study on the
35 feasibility, benefits and costs
36 of implementing low- and zero-emissions designated
37 zones for medium- and
38 heavy-duty vehicles as defined in regulations
39 promulgated pursuant to
40 section 19-0306-b of this title within the state
41 that are designed to
42 lower air pollution, congestion, greenhouse gas
43 emissions, and noise,
44 and to increase safety. The study shall include
45 recommendations for
46 implementation of low- and zero-emissions zones
47 at the state and local
48 level and shall be made available to the public and
49 posted on a publicly
50 available website. In conducting the study, the
51 department shall consid-
52 er:
53 a. Creation of zones restricting deliveries to
54 zero-emissions delivery
55 vehicles only;
56 b. Creation of zones requiring delivery
57 vehicles to meet certain
58 stringent air pollution standards;
59 c. Creation of zones requiring a fee for
60 entry for diesel-powered
61 medium- and heavy-duty vehicles;
62 d. Prioritization of low- and zero-emissions
63 zones within disadvan-
64 tagged communities identified under article seventy-
65 five of this chapter;
66 nonattainment zones under the national ambient air
67 quality standards set
68 by the federal environmental protection agency
69 in 42 U.S.C. 7401; and
70 other vulnerable areas including areas proximate to
71 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;

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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
21 establishing and implementing
22 an indirect source pollution program in accordance
23 with this subdivision
24 to require the program to implement all data
25 collection and reporting
26 requirements contemplated by subdivision two of
27 this section and submit
28 all such data and reporting information to the
29 department no less
30 frequently than every twelve months for review by
31 the department.
32 c. The department shall conduct an annual
33 review of any indirect
34 source pollution program established and
35 implemented pursuant to this
36 subdivision. Such reviews shall evaluate whether,
37 among other relevant
38 matters, such program continues to be at least
39 as stringent as the
40 program established under subdivisions one,
41 two and three of this
42 section.
43 d. In the event that the department determines
44 that a program estab-
45 lished pursuant to this subdivision is not
46 meeting any applicable
47 requirements under this subdivision, the
48 department shall immediately
49 notify such city of the deficiencies and if, in the
50 determination of the
51 department, the city does not take satisfactory
52 corrective action, the
53 department may take any corrective action it deems
54 appropriate, includ-
55 ing but not limited to suspending or terminating
56 the approval contem-
57 plated by paragraph a of this subdivision and
58 enforcing the provisions
59 of this section in such city; provided,
60 however, any indirect source
61 pollution law in effect in a city of one million or
62 more as of the

42 effective date of this section may not be found
43 to be failing to meet

44 such applicable requirements for the one-year
45 period following the

46 effective date of this section.

47 e. The exemption contemplated by this
48 subdivision shall be limited to

49 the regulation of indirect source pollution from
50 qualifying warehouses

51 and may not be construed as an exemption from
52 compliance with any other

53 law, rule, regulation, decision or order.

54 6. Nothing in this section shall be construed to
55 preempt any locality

56 from implementing innovative emissions reduction
57 programs in sustainable

58 freight movement such as Blue Highways and micro-
59 distribution, provided

60 that any such program does not provide an exemption
61 from compliance with

62 this section.

63 § 2. Severability. If any clause, sentence,
64 paragraph, section or part

65 of this act shall be adjudged by any court of
66 competent jurisdiction to

67 be invalid and after exhaustion of all further
68 judicial review, the

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71 judgment shall not affect, impair or invalidate the
72 remainder thereof,

73 but shall be confined in its operation to the
74 clause, sentence, para-

75 graph, section or part of this act directly
76 involved in the controversy

77 in which the judgment shall have been rendered.

78 § 3. This act shall take effect on the
79 thirtieth day after it shall

80 have become a law.