

JUNE 2024

VOL. 24-6

PRATT'S

ENERGY LAW

REPORT



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ISBN: 978-1-6328-0836-3 (print)
ISBN: 978-1-6328-0837-0 (ebook)
ISSN: 2374-3395 (print)
ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT’S ENERGY LAW REPORT [page number]
(LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT’S ENERGY
LAW REPORT 4 (LexisNexis A.S. Pratt)

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POSTMASTER: Send address changes to *Pratt's Energy Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

Warehouse and Logistics Operations Targeted by Regulatory Push for “Indirect Source Rules” Targeting Vehicle Emissions

*By Meera Gorjala, Joshua R. More and J. Michael Showalter**

In this article, the authors explain what indirect source rules are and what they could mean for warehouse operations going forward, and discuss recent activity in California and New York.

Historically, regulations under the federal Clean Air Act (CAA) and related state laws divided the world into “stationary” and “non-stationary sources.” “Stationary sources” included facilities like power plants and factories and “non-stationary” sources targeted vehicles, engines, and other things that moved.

In recent years, the number and size of logistics facilities has boomed, resulting in increased attention to vehicle emissions associated with warehouses and other logistics facilities. Several local jurisdictions have adopted or proposed adopting indirect source rules (ISRs) to address the “indirect” environmental impacts of large warehouses, which often result not from the warehouses themselves, but instead from the vehicles that drive to and from and idle at the facilities.

The warehousing and logistics industry needs to keep a close eye on these regulations as they can involve costly compliance measures. This article explains what ISRs are and what they could mean for warehouse operations going forward, and discusses recent activity in California and New York.

WHAT ARE ISRS?

Warehouses have come under environmental scrutiny due to the potential for air emissions associated with the movement of goods. With the increased prominence of environmental justice (EJ) issues under the Biden administration, regulators and environmental non-governmental organizations (NGOs) have scrutinized the environmental impacts of large warehouses due to their potential to be sited in EJ communities and because the traffic generated by logistics facilities can cause community complaints.

ISRs are a method of targeting emissions from warehouses that are not associated with the four walls of the facility itself. Rather, they regulate issues such as vehicle emissions related to the warehouse operations and the movement of goods.

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SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S WAIRE PROGRAM

As with other issues affecting the environment, California regulators are among the first to advocate for ISRs. The California's South Coast Air Quality Management District (SCAQMD) enacted an ISR regulating indirect warehouse emissions in 2021. The "Warehouse Indirect Source Rule," or Rule 2305,¹ was developed to reduce air pollution from mobile sources such as trucks delivering goods to and from the facilities, yard trucks, transport refrigeration units, ships, and trains. These ISRs can also extend to on-site stationary equipment such as diesel backup generators or manufacturing equipment.

The Warehouse Indirect Source Rule operates using a points-based system. The program requires operators to earn a certain number of points each year to offset the annual number of truck trips made to and from the warehouse, with larger trucks such as tractors or tractor-trailers multiplied by two and a half. Points needed to offset vehicle emissions can be earned in three ways:

- First, by completing actions provided in the Warehouse Actions and Investments to Reduce Emissions (WAIRE) menu, which includes projects such as on-site solar installation, energy efficiency upgrades, and EV charging infrastructure installation;
- Second, by completing actions in an approved, site-specific custom WAIRE Plan; or
- Third, by paying a mitigation fee, the funds of which go towards incentives for near-zero and zero-emission trucks and zero-emission charging and fueling infrastructure in communities near the warehouses that pay the fee.

Implementation of the program is phased in over time based on the size of the warehouse. In 2022, the largest warehouses of 250,000 square feet and above were subject to the rule. Starting in 2023, the rule expanded to include mid-sized facilities of 150,000 square feet and above. Starting this year, 100,000 square foot facilities will also need to comply.

The ISR also requires owners and operators of covered warehouses to submit an Initial Site Information Report (ISIR) and an Annual WAIRE Report. In an ISIR, a warehouse operator must provide information about the warehouse's operations, such as the size, number of truck trips, and certain onsite equipment, in addition to expected actions to comply with the rule. This report only needs to be submitted once but must be resubmitted if an operator moves

¹ <https://www.aqmd.gov/docs/default-source/rule-book/reg-xxiii/r2305.pdf?sfvrsn=15>.

to another warehouse. The Annual WAIRE Report must document compliance with the rule during the year, providing information about how many points the operators is obligated to earn and how many WAIRE point were actually attained.

The penalties for failure to comply with these potentially costly requirements can be steep, including civil penalties of up to \$11,710 per day. The SCAQMD recently announced that of the 2,000 warehouses currently subject to the rule, 1,400 were considered out of compliance.

Perhaps predictably, SCAQMD’s Rule has already been challenged. In 2021, the California Trucking Association (CTA) filed a complaint in the U.S. District Court for the Central District of California alleging that the ISR was preempted by federal law, not authorized by state law, and was an unlawful tax. However, the court ruled in favor of the SCAQMD on summary judgement, upholding the ISR against arguments that the rule was preempted by the federal law.

In October 2023, the US Environmental Protection Agency (EPA) also sought to incorporate the rule into California’s State Implementation Plan, which would make the rule federally enforceable under the CAA. EPA accepted comments on the proposed rule until November 13, 2023, and plans to follow with a final action.

PROPOSED BILL IN NEW YORK

State and local regulators in New York are also focused on warehouse emissions. Some examples:

- The town of Montgomery recently enacted a moratorium on new warehouses within its jurisdiction.²
- An ISR bill has also been introduced in the New York State Assembly. A.9799 would create a new permitting and oversight system administered by the New York Department of Environmental Conservation to address indirect emissions.³ The bill would require warehouse operators to demonstrate emission reductions efforts by installing solar panels on-site, using alternative transportation modes for incoming or outgoing trips, or paying additional fees. A.9799 also includes a permit requirement for new warehouse developments or those proposing significant modifications, ongoing reporting requirements, and en-

² <https://ecode360.com/MO0967/laws/LF1154624.pdf>.

³ https://assembly.state.ny.us/leg/?default_fld=&bn=A09799&term=2021&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y#A09799.

hanced protections and study requirements for EJ communities or hotspots in the state.

CONCLUSION

Affected companies should remain alert for more developments and should regularly monitor state law and administrative activity in this area.