

Government Gone Wild! Part 2: New Deadlines are Approaching for California Warehouse Owners & Operators

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On February 23, 2021, Benesch published an article on titled Government Gone Wild! Another First-Of-Its-Kind Regulations Targets the Logistics Industry. The article examined California's South Coast Air Quality Management District ("SCAQMD" or "District") Proposed Rule 2305 - Warehouse Indirect Source Rule (the "Indirect Source Rule"). The Rule would collect fees (just under \$1 billion annually) from warehouses in southern California that are over 100,000 square feet unless these warehouses earn WAIRE points, or pays a mitigation fee, by taking certain actions to reduce nitrogen oxide emissions and diesel particulate matter from truck traffic at warehouses.

The Indirect Source Rule is considered first-of-its-kind because, unlike traditional air regulations that target emissions directly from facilities, the rule targets trucks visiting warehouses that are not owned or controlled by the warehouse. Notably, air districts like SCAQMD cannot regulate vehicle tailpipe emissions. The Indirect Source Rule is different in that it purports to regulate warehouse facilities, as opposed to vehicle tailpipe emissions.

On May 7, 2021, the District formally adopted the Indirect Source Rule by a vote of 9 to 4. The basic structure of the Rule is the same as the Proposed Rule analyzed in the prior article.

What You Need to Know to Comply with the Indirect Source Rule

The Indirect Source Rules achieves compliance by targeting warehouses in three phases. Phase 1 applies to warehouse greater than or equal to 250,000 square feet. The first compliance period for Phase 1 warehouses runs from January 1, 2022 through December 31, 2022. Phase 2 targets warehouses between 150,000 square feet and 250,000 square feet. The first compliance period for Phase 2 warehouses begins on January 1, 2023 and ends on December 31, 2023. Phase 3 applies to warehouses that are between 100,000 square feet and 149,000 square feet. The first compliance period for Phase 3 begins on January 1, 2024 and ends on December 31, 2024. However, regardless of the size of a warehouse, warehouse owners and operators must take action now to comply with the initial reporting requirements.

a. Initial Warehouse Owner Requirements

All warehouse owners with a warehouse greater than or equal to 100,000 square feet must submit a Warehouse Operations Notification ("WON") to the District by September 1, 2021. The WON must include the warehouse size and the area that may be used for warehouse activities, the warehouse lessee's name(s) and contact information, the lease start and end dates, the previous warehouse

operator(s) information, and the square footage used by the warehouse owner for warehousing activities.

b. Initial Warehouse Operator Requirements

By July 1, 2022, operators of a warehouse greater than or equal to 250,000 square feet must submit an Initial Site Information Report ("ISIR"). The ISIR must include the warehouse size and area, the number of anticipated truck trips, anticipated actions necessary to meet the WAIRE Points Compliance Obligation ("WPCO"), provide details on potential onsite equipment, and, most importantly, include the number of truck trips in the previous 12-month period. This means that operators of a warehouse greater than or equal to 250,000 square feet need to start counting truck trips *immediately* in order to satisfy the ISIR's previous 12-month truck trip requirement because the typical reporting period would be from the previous June 1 through May 31 period based on the July 1 deadline.

i. What is a Truck Trip?

A truck trip is the one-way trip a truck or tractor trailer makes to or from a site through the truck gate or driveway with at least one warehouse to deliver or pick up goods stored at that warehouse for later distribution to other locations. A truck for purposes of the Indirect Source Rule is classified as any Class 2b-7 and Class 8 trucks under any powertrain type. For purposes of the ISIR, a truck or tractor entering a warehouse and then leaving the same warehouse counts as two truck trips.

However, simply counting the number of trucks entering and leaving a warehouse is not enough to satisfy the ISIR. Operators must also record the date and time of the truck trip and whether the truck is a Class 2b-7 vehicle or a Class 8 vehicle. Additional information required by the ISIR includes fleet data if a warehouse operator owns or leases on-road trucks or tractors that serve the warehouse, fuel/charging data if the warehouse operator has an alternative fueling station or charging station, and truck yard data if the warehouse operator has yard trucks that are used at the warehouse.

The District does not endorse a particular method for counting truck trips as long as the method is verifiable and representative. Guidance issued by the SCAQMD provides examples of methods used for counting truck trips, which include: (1) electronic telematics systems that track truck activity via on-board GPS and fleet management software; (2) in-roadway or driveway sensors that count when a vehicle passes a certain point; (3) video monitoring; (4) guard shack monitoring; (5) reviewing documents like contracts or manifests that document load deliveries and pickups from a warehouse; or (6) any other method that is verifiable and representative.

In short, the District continues to press forward with its novel approach to environmental regulation. Moreover, to date, no party has commenced any litigation to challenge the Indirect Source Rule. Therefore, warehouse operators should take all of the foregoing into account and promptly develop plans to comply with the Indirect Source Rule. Benesch will continue to monitor guidance issued by the District on the Indirect Source Rule.

For more information, contact a member of Benesch's [Transportation & Logistics Practice Group](#).

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