CLIENT ALERTS & INSIGHTS

Warehouses Watching Their Backs in California: Legislative and Regulatory Developments

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California legislators and regulators continue to create various challenges for warehouse owners and operators throughout the Golden State. Two recent developments in particular serve as stark reminders to owners and operators of warehouses-particularly those located in the Inland Empire and Southern California-that legal compliance must remain top of mind. First, warehouse operators in California are finding themselves increasingly the recipients of notices of violation arising from their failure to comply with certain emissions-related regulations. Second, California just enacted a new statute that restricts the manner in which new warehouses may be developed and in which existing warehouses may be expanded.

Notable South Coast AQMD Enforcement Activity:

The South Coast Air Quality Management District ("SCAQMD"), a regional government agency in California that governs air quality in Los Angeles County, Orange County, and significant portions of Riverside County and San Bernardino County, is ramping up its enforcement of air pollution regulations applicable to warehouse and distribution center operators. By December of 2023, over 500 non-compliant warehouse operators were slated for citation by the SCAQMD. As of late October 2024, the SCAQMD had already issued at least 102 violations to non-conforming operators with many more citations projected to be issued by the end of year. For instance, pursuant to a news release, SCAQMD officials stated that this was only the "first wave" of enforcement actions, and that SCAQMD will continue issuing violations to the remaining 400 noncompliant facilities unless those facilities take immediate action.

This enforcement action stems from a previous SCAQMD announcement in 2023 in which the SCAQMD stated that it would begin an enforcement initiative to bring warehouses into compliance with its Warehouse Indirect Source Rule (the "ISR"). The ISR, which became effective in 2021, aims to reduce emissions related to warehouse operations, particularly emissions generated from idling Heavy-Duty vehicles and equipment. The ISR includes the Warehouse Actions and Investments to Reduce Emissions ("WAIRE") Program. The first phase of the program applies to operators of warehouses having 250,000 square feet of space or more.

At a high level, the WAIRE Program requires applicable warehouse operators to earn a specified number of "WAIRE Points" annually based on the size of the warehouse and number of truck trips to and from the warehouse. Operators who fail to earn the requisite number of points are subject to monetary penalties and fines, as well as more significant enforcement action such as civil litigation to enforce compliance. In particularly serious cases, the SCAQMD may seek to impose restrictions on operations themselves.

The WAIRE fines can be particularly substantial. Operators who receive continuing violations are subject to a civil penalty of up to $11,710 *per day*. Citations may be issued to companies that did not meet the WAIRE Point pollution reduction requirements as well as to companies that failed to submit proper reports. Notably, the WAIRE Program's final phase will commence in January of 2025, at which time the program will apply to all warehouses over 100,000 square feet in size. To avoid potential enforcement action, it is critical that operators promptly evaluate whether they are subject to the WAIRE Program and, if so, take immediate action to ensure compliance.

California Assembly Bill 98 Passes; Warehouses soon subject to strict building standards and restrictions:

California Governor Newsom signed Assembly Bill 98 into law on September 29, 2024. Key provisions of this new law are subject to take effect on January 1, 2026. The new law imposes significant new requirements on companies seeking to build new (or significantly develop existing) warehouses in California. The law contains various provisions intended to protect California residents from potential harm caused by emissions generated from warehouse operations. This includes various setback requirements for warehouses that are built near homes, schools, hospitals, and other facilities. Additionally, warehouses must be located on roads that are customarily subject to commercial traffic and must develop and obtain local government approval of a "truck routing plan" that minimizes congestion and truck traffic being routed through residential areas or other large population centers.

The law also requires the warehouse owners to compensate any displaced residents whose homes are demolished in the course of building the warehouse. In addition, the owner of the warehouse will also be required to build two replacement units of affordable housing for every home removed via the building of a new warehouse.

Finally, certain new warehouses will be required to use zero-emission technology, to meet specific energy efficiency standards, and to prevent trucks from idling their engines at the warehouse.

Existing warehouses are exempted from these new laws so long as they are not significantly modified in size. A significant expansion of an existing warehouse will potentially trigger imposition of these requirements to the expanded facility.

Entities seeking to build new warehouses or to develop existing warehouses in California should scrutinize all requirements contained in AB 98 to avoid potentially costly issues associated with any non-compliance with these new laws. And, of course, the higher costs imposed on companies building or developing warehouses will trickle down to the actual warehouse operators leasing such facilities (as well as to their customers). Those involved in the warehouse industry in California should plan accordingly.

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