



DEVELOPING NEWS



[Sean M. Sherlock](#)

Partner | Orange County

714.427.7036

ssherlock@swlaw.com

My [LinkedIn](#) Profile

South Coast Air Quality Management District to Regulate Distribution Warehouses, Part 1

As industrial facilities go, distribution warehouses are clean, non-polluting operations. They generally do not operate industrial furnaces, boilers, compressors, pumps, tanks or other major stationary sources of air pollution. But the South Coast Air Quality Management District (“AQMD”) considers distribution warehouses to be “indirect” sources of air pollutants because trucks making deliveries and pickups to and from these warehouses emit diesel exhaust containing nitrogen oxides (“NOx”), diesel particulate matter (“DPM”), and other air pollutants.

The regulation of mobile sources of air pollution (such as auto and truck exhaust) is and always has been within the jurisdiction of the California Air Resources Board (“CARB”). The various regional Air Quality Management Districts and Air Pollution Control Districts have authority to regulate *stationary* sources of air pollution (such as petroleum refineries, power plants, manufacturing plants, gas stations).

However, California law gives the AQMD authority to regulate “indirect” sources of air pollution subject to certain limitations. “Indirect” sources of air pollution include facilities that attract mobile sources of air pollution. The AQMD is now pursuing a new regulation to regulate truck traffic to and from distribution warehouses. The rule could be adopted next year.

In this article I briefly discuss the draft rule’s requirements. In a forthcoming article I will address legal issues concerning indirect source rules in general and this proposed rule in particular.

Proposed Rule 2305: Warehouse Indirect Source Rule

For the last several years AQMD staff have been working on a proposed “indirect source rule” to regulate distribution warehouses. At this point the AQMD’s draft regulation is 19 pages, extremely complex, and still taking shape. AQMD staff expect



to bring a final proposed rule to the AQMD's Board for approval by next March. Thus, the current draft rule may be close to what the industry should expect if the rule is adopted.

The draft rule would apply to owners of distribution warehouses within the AQMD's jurisdictionⁱ having 100,000 or more square feet of indoor floor space that may be used for warehousing activities, and operators who lease 50,000 square feet or more within any such warehouse.

The draft rule has three main elements: reporting, emission reduction or fee requirements, and recordkeeping.

Reporting

First, the draft rule would require warehouse owners and operators to identify themselves by reporting information about their facilities to the AQMD. Within 60 days of the rule's adoption warehouse **owners** must report the warehouse size, the square footage that may be used for warehousing activities, the name and contact information of the warehouse operator, and the duration of the current lease term. Warehouse **operators** must submit an Initial Site Information Report providing information about the warehouses they lease and operate. Among other things, warehouse operators will be required to report the number of truck trips to and from the warehouse within the previous 12-month compliance period, the estimated number of truck trips for the next 12-month compliance period, and as applicable fleet data, yard truck data, alternative fueling/charging station information, and alternative energy generation system data.

Warehouse operators must also submit annual reports containing, among other things, truck trip data and data demonstrating their compliance with the emission reduction or fee requirements.



Emission Reduction or Fee Requirements

Substantively, the draft rule requires warehouse operators to either implement emission reduction measures or write a check to the AQMD. Each year the warehouse operator must earn a certain number of points, called “WAIRE points” (Warehouse Actions and Investments to Reduce Emissions). The number of required WAIRE points is based on the number and size of trucks that visit the warehouse during each compliance period. Points may be earned in either of three ways: (1) implementing WAIRE Menu measures; (2) implementing an approved Custom WAIRE Plan; or (3) paying a fee.

An operator may earn WAIRE points by implementing emission reduction measures from AQMD’s WAIRE Menu. In its current draft form, the WAIRE Menu offers points for acquiring zero-emission or near-zero-emission trucks, or for zero-emission or near-zero-emission truck trips to the operator’s warehouse, or for acquiring zero-emission or near-zero-emission yard trucks. Other WAIRE Menu items include installing onsite electric charging or hydrogen fueling infrastructure, installing onsite solar panels, and installing air filtration systems in residences, schools, daycares, hospitals, and community centers.

An operator may earn WAIRE points by implementing a Custom WAIRE Plan prepared for the operator’s specific operations and approved by the AQMD. The rule imposes strict criteria on Custom WAIRE Plans. Among other things, the Custom WAIRE Plan must: (1) describe how the proposed actions will achieve quantifiable, verifiable, and real NOx and DPM emission reductions; (2) quantify the expected NOx and DPM emission reductions within the South Coast district and within three miles of the warehouse; and (3) describe the method that will be used to verify achievement of the emission reductions. The number of WAIRE points that an operator may earn for actions under a Custom WAIRE Plan depends on methodologies that the AQMD has yet to roll out.



Finally, in lieu of earning WAIRE points under the WAIRE Menu or a Custom WAIRE Plan, an operator may pay the AQMD a fee to cover all or any portion of its WAIRE points obligation. The draft rule proposes a fee of \$1,000 per WAIRE point, although the rule does not yet specify the factors needed to compute an operator's annual WAIRE points obligation.

The draft rule provides that WAIRE points may be transferred to different warehouses and different compliance years under limited circumstances. Of particular note to warehouse owners, WAIRE points may be transferred between owners and operators within the three-year period after the points were earned.

Recordkeeping

Under the draft rule, records documenting the accuracy and validity of all information submitted to the AQMD under the rule must be kept by the warehouse owner or operator, as applicable, for a minimum of seven years and made available to AQMD upon its request.

Conclusion

There remain many details that AQMD staff have yet to work out, but this rule has potential to impose a significant burden and expense on warehouse operators and the Southern California logistics industry. AQMD staff have tentatively scheduled virtual community meetings in January and expect to present a final proposed rule for AQMD Board consideration in March, 2021. This will be an important rule for the Southern California logistics industry to follow.

October 14, 2020

Snell & Wilmer
Committed to being your perfect fit.®



Snell & Wilmer
Committed to being your perfect fit.®

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | **Orange County** | Phoenix | Portland | Reno
Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

©2020 All rights reserved. The purpose of this newsletter is to provide our readers with information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The articles and/or information should not be considered legal advice or opinion, because their content may not apply to the specific facts of a particular matter. Please contact a Snell & Wilmer attorney with any questions.

¹ The South Coast Air Quality Management District's jurisdiction encompasses the non-desert portions of Los Angeles and San Bernardino Counties, all of Orange County, and most of Riverside County.