

Warehouses/Clean Air Act: U.S. Environmental Protection Agency Approves California Indirect Source Rule



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The United States Environmental Protection Agency (“EPA”) published a final rule in the September 11th Federal Register that approved a revision to the South Coast Air Quality Management District (“SCAQMD”) portion of the California State implementation Plan (“SIP”). See 89 Fed. Reg. 73568.

The revision to the SIP addresses emissions of oxides of nitrogen (“NOx”) and particulate matter (“PM”) associated with warehouses as indirect sources that attract or may attract mobile source emission.

The growth of logistics warehouses to address e-commerce purchases has in recent years drawn the attention of air regulatory agencies and environmental groups. Such facilities may be much bigger than traditional warehouses and generate a great deal more truck and vehicle traffic. The stated concern is the increased/localized emissions of Nox from the associated vehicles. This may be seen as particularly problematic in areas that are in Clean Air Act non-attainment areas.

Of course, the air emissions associated with such warehouses do not originate from the facility itself. Instead, such emissions are derived from the trucks and other traffic indirectly associated with their operations. As a result, warehouses are often described as “indirect sources”. In other words, warehouses do not fall within the scope constituting a Clean Air Act “stationary” source.

A few areas in the country have considered adopting indirect source rules to address the emissions associated with the vehicles moving into and out of such facilities.

SCAQMD Rule 2305 (“Warehouse Indirect Source Rule”) is an example. The described purpose of SCAQMD is to reduce local and regional national emissions of NOx and PM through facilitation of local and regional emission reductions associated with warehouses and mobile sources attracted to warehouses to meet Clean Air Act National Ambient Air Quality Standards for Ozone and fine PM 2.5. The Rule would only apply within the jurisdiction of the SCAQMD which includes certain portions of California.

The Rule applies to owners and operators of warehouses located in the SCAQMD with greater than 100,000 square feet of indoor space in a single building and who operate at least 50,000 square feet of the warehouse for warehousing activities.

EPA further notes in the Federal Register in describing the Rule:

... Warehouse operators are required either to earn points from specified emission reduction activities or to pay a mitigation fee. The points that warehouse operators earn are referred to as Warehouse Actions

and Investments to Reduce Emissions Points (“WAIRE Points”). Warehouse facility owners or warehouse landowners may elect to opt in to earn WAIRE Points and transfer these points to a warehouse operator at the same site. Both warehouse facility owners and operators must comply with certain recordkeeping and reporting requirements under the rule.

Therefore, the principal substantive requirement of SCAQMD Rule 2305 is the requirement that each warehouse operator or owner that opts in meet an annual compliance obligation earning WAIRE Points.

SCAQMD had previously enacted Rule 2305. In other words, the EPA final rule simply approves an amendment to the SCAQMD’s Clean Air Act Implementation Plan. The Rule has been challenged by the California Trucking Association and Airlines for America in federal court. The novelty of this approach will presumably generate additional challenges by the affected organizations both con (transportation/logistics entities) and pro (environmental organizations).

A copy of the Federal Register notice can be downloaded [here](#).