Bloomberg Law®

Environment & Energy

SoCal Regulators Require Warehouses to Reduce Trucking Emissions—Who's Next?

By Joshua T. Bledsoe and Jennifer Garlock

Oct. 29, 2021, 4:00 AM

A local air district in Southern California approved a rule requiring warehouses to reduce trucking emissions and adopt clean technologies or pay a mitigation fee. Latham & Watkins attorneys examine its requirements and say it could have regional and national effects, including raising consumer prices and serving as a template for other air quality regulators.

The South Coast Air Quality Management District (SCAQMD) approved a first-in-the-nation rule to regulate trucking emissions from warehouses earlier this year.

Rule 2305, the Warehouse Indirect Source Rule (ISR), approved in May, establishes the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program to reduce emissions associated with warehouse activity. The WAIRE Program incentivizes warehouse operators to take actions to electrify warehouse activities and the trucks that visit warehouses in order to reduce nitrogen oxides (NOx) and diesel particulate matter (DPM) emissions.

As we previewed in a 2019 blog post, despite the warehouse sector's limited control over the types of trucks servicing its facilities (warehouses generally do not own or operate trucking fleets), the ISR imposes obligations on warehouses to indirectly reduce trucking emissions.

The WAIRE Program applies to warehouses in the South Coast Air Basin (basin) with more than 100,000 square feet of warehouse space in a single building, and will phase in over three years based on warehouse size, with warehouses of more than 250,000 square feet having the earliest compliance period.

While the ISR directly regulates only warehouses in the basin (home to more than 17 million people), the ISR likely is to have national impacts on the cost of goods, the types of trucks in out-of-state fleets that service the basin, and could lead to similar regulations in other jurisdictions.

Compliance Obligation

Warehouse operators must earn WAIRE "points" to meet their WAIRE points compliance obligation (WPCO), which is calculated based on the weighted annual number of truck trips to the warehouse (where Class 8 trucks are weighted 2.5 times more than Class 2b-7 trucks). Thus, the more trucks that visit a warehouse in a given year, the higher the WPCO.

SCAQMD estimates that the ISR will impose total annual average costs on the industry of $0–$670 million per year, or $0.00–$0.83 per square foot of warehouse space, depending on the compliance measures chosen by the warehouse operator. In addition to increasing costs for existing warehouses, the ISR will impact the siting, design, and operation of new warehouses, including actions by local land-use authorities (i.e., cities and counties).

Earning Points

WAIRE points may be earned to meet the WPCO in several ways, including: (1) taking actions identified in the "WAIRE menu;" (2) implementing an approved Custom WAIRE Plan with "off-menu" actions to reduce emissions; or (3) paying a mitigation fee.

The WAIRE menu lists action items that a warehouse operator may take, and the corresponding number of points that such actions earn. The point values are determined based on the action's cost, the regional emission reductions achieved (NOx), and the local emission reductions achieved (DPM).

Examples of point-generating items on the WAIRE menu include: (1) purchasing a zero-emission Class 8 truck for the warehouse operator's fleet; (2) receiving visits from a zero-emission Class 8 truck, regardless of ownership; (3) acquiring a zero-emission yard truck; and (4) installing electric charging stations. Any combination of WAIRE menu items may be used to meet the WPCO.

Alternatively, a warehouse operator may meet its WPCO without taking any action to reduce emissions and instead paying a mitigation fee, equal to $1,000 per point (plus a 6.25% administration fee, under the simultaneously adopted Rule 316). The mitigation fee may be used in tandem with earning points from the WAIRE menu or Custom WAIRE Plan to meet the WPCO.

Mitigation fees will fund the WAIRE mitigation program, administered by SCAQMD, which will provide funds for projects to reduce emissions in the vicinity of warehouses that paid the fees.

Transferring and Banking Points

The ISR includes several provisions intended to provide compliance flexibility. Warehouse operators may earn points at one warehouse and, after satisfying that warehouse's WPCO, transfer any excess points to another warehouse under the same operational control, subject to discounting.

Warehouse operators also may bank excess points for use in any of the three compliance periods after they were earned, so long as the WAIRE menu item used to earn the points remains surplus to other regulatory requirements when the points are retired.

National Implications

While the ISR governs only warehouses in the basin, it could have regional and national effects. Roughly 40% of cargo enters the U.S. in the basin (via the ports of Los Angeles and Long Beach), and an increase in logistics costs could increase consumer prices regionally and nationally.

Out-of-state logistics companies that service warehouses in the basin may need to alter the make up of their fleets to add zero emission or near-zero emission trucks, or change truck routes and duty cycles to accommodate the need for charging infrastructure. If clean technologies fail to scale quickly enough, the ISR could exacerbate existing supply chain disruptions tied to the Covid-19 pandemic.

In addition, the ISR may encourage other jurisdictions to adopt similar regulations. In particular, the current emphasis on environmental justice (including the Biden administration's Justice40 Initiative) may encourage regulators to promulgate ISRs to protect disadvantaged communities.

Finally, logistics companies may resist such ISRs, leading to litigation challenges. For example, a trucking association recently filed suit in federal court, alleging SCAQMD lacks authority to adopt the ISR (due to federal preemption), the ISR constitutes an unconstitutional tax, and branding SCAQMD's compliance cost estimates as optimistic.

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

Write for Us: Author Guidelines

Author Information

Joshua T. Bledsoe is counsel in the Environment, Land & Resources Department at Latham & Watkins. He advises clients on complex infrastructure and development projects, particularly those utilizing renewable or low-carbon technologies.

Jennifer Garlock is an associate in the Los Angeles office of Latham & Watkins and a member of the firm's Environment, Land & Resources Department.

Law Firms

Latham & Watkins

Topics

cargo transportation
consumer prices
state environmental legislation
vehicle emissions
limitations on authority to tax