

ASSEMBLY, No. 5941

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 24, 2021

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Requires certain warehouse operators to implement air pollution reduction and mitigation plans.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning air pollution caused by certain warehouse
2 operations and supplementing Title 26 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 "Compliance period" means a 12-month period of time during
9 which a warehouse operator covered under the provisions of this act
10 is required to implement an air pollution reduction and mitigation
11 plan.

12 "Department" means the Department of Environmental
13 Protection.

14 "Partial zero-emission vehicle" means a vehicle certified as a
15 partial zero-emission vehicle pursuant to the California Air
16 Resources Board vehicle standards for the applicable model year.

17 "Warehouse" means a building that stores cargo, goods, or
18 products on a short- or long-term basis for later distribution to
19 businesses or retail customers.

20 "Warehouse operator" means an entity that conducts day-to-day
21 operations at a warehouse, including operations conducted through
22 the use of third-party contractors, which entity may or may not be
23 the owner of the warehouse.

24 "Zero-emission vehicle" means a vehicle certified as a zero-
25 emission vehicle pursuant to the California Air Resources Board
26 zero-emission vehicle standards for the applicable model year but
27 shall not include a partial zero-emission vehicle.

28

29 2. a. No later than 24 months after the effective date of this act,
30 the department shall develop, pursuant to the provisions of this act,
31 a program to reduce and mitigate air pollution created by warehouse
32 operations in the State.

33 b. Beginning 36 months after the effective date of this act, a
34 warehouse operator that utilizes more than 50,000 square feet for its
35 operations in a warehouse greater than 100,000 square feet in size
36 shall not operate in the State unless it implements the standard air
37 pollution reduction and mitigation plan developed by the
38 department pursuant to section 3 of this act or a custom air pollution
39 reduction and mitigation plan developed pursuant to section 4 of
40 this act.

41

42 3. A warehouse operator may comply with the provisions of this
43 act by implementing a standard air pollution reduction and
44 mitigation plan, provided that the plan has been approved by the
45 department pursuant to section 5 of this act. The department shall
46 develop, as part of the rules and regulations adopted to implement
47 this act, a template for the standard air pollution reduction and
48 mitigation plan.

1 a. The standard air pollution reduction and mitigation plan shall
2 require warehouse operators to accrue a number of air pollution
3 reduction and mitigation points during a compliance period, using a
4 formula established in the rules and regulations adopted to
5 implement this act. The number of required points shall be
6 proportional to the amount of semi-tractor-trailer truck traffic that
7 originates from the warehouse operations during the previous
8 compliance period, which shall be calculated using a formula
9 developed by the department pursuant to paragraph (2) of
10 subsection a. of section 6 of this act. The department shall, during
11 the first four years of the program established pursuant to
12 subsection a. of section 2 of this act, multiply the number of
13 required points by a factor between zero and one, which factor may
14 vary according to warehouse operator size. Beginning on the fifth
15 year of the program and thereafter, this factor shall equal one.

16 b. Under the standard air pollution reduction and mitigation
17 plan, a warehouse operator may be awarded air pollution reduction
18 and mitigation points only for the following activities completed
19 during the compliance period:

20 (1) purchase of a zero-emission vehicle or partial zero-emission
21 vehicle for use in the warehouse operator's semi-tractor-trailer truck
22 fleet or as a vehicle used solely to perform warehouse operations;

23 (2) delivery of a load of cargo to, or the pick up of a load of
24 cargo from, a warehouse using a semi-tractor-trailer truck that is a
25 zero-emission vehicle or partial zero-emission vehicle;

26 (3) use of a vehicle that is a zero-emission vehicle or partial
27 zero-emission vehicle to perform warehouse operations for one
28 hour;

29 (4) installation of a charging or fueling station for zero-emission
30 vehicles to support a warehouse's operations;

31 (5) use of a charging or fueling station to charge or fuel a zero-
32 emission vehicle that is used solely to perform warehouse
33 operations, or that is in the warehouse operator's semi-tractor-trailer
34 truck fleet;

35 (6) installation of a solar electric power generation system on
36 the premises of a warehouse used by the warehouse operator;

37 (7) generation of one kilowatt-hour of electric power using a
38 solar electric power generation system installed on the premises of a
39 warehouse used by the warehouse operator;

40 (8) installation of an air filtration system capable of removing
41 automobile exhaust from the air at a school, daycare, hospital,
42 community center, or other appropriate building, as determined by
43 the department, which building is located in the same municipality
44 as a warehouse used by the warehouse operator;

45 (9) replacement of a filter in an air filtration system capable of
46 removing automobile exhaust from the air at a school, daycare,
47 hospital, community center, or other appropriate building, as

1 determined by the department, which building is located in the same
2 municipality as a warehouse used by the warehouse operator; or

3 (10) provision of an alternative compliance payment of \$1,000
4 for deposit into the Plug-in Electric Vehicle Incentive Fund
5 established pursuant to section 7 of P.L.2019, c.362 (C.48:25-7).

6 The department shall develop a weighting system for the points
7 given for activities listed in paragraphs (1) through (10) of this
8 subsection. Notwithstanding the provisions of the “Administrative
9 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
10 contrary, the department may vary the weighting system for a
11 compliance period, provided that warehouse operators are notified
12 at least two calendar years in advance of any variation.

13 c. Air pollution reduction and mitigation points shall not be
14 transferable, except that a warehouse operator that accrues more
15 than the required number of points during a compliance period may
16 carry forward the surplus points to the subsequent compliance
17 period.

18
19 4. a. A warehouse operator may comply with the provisions of
20 this act by implementing a custom air pollution reduction and
21 mitigation plan, provided that the plan has been approved by the
22 department pursuant to section 5 of this act.

23 b. A custom air pollution reduction and mitigation plan shall, at
24 a minimum:

25 (1) describe the actions to be taken by the warehouse operator
26 during the compliance period to reduce or mitigate air pollution
27 caused by the warehouse operator;

28 (2) quantify the reduction of dust, ozone, nitrous oxides, and
29 particulate emissions that the warehouse operator estimates would
30 result from the actions described pursuant to paragraph (1) of this
31 subsection;

32 (3) describe the method to be used to ascertain whether the
33 actions have achieved the estimated emission reductions;

34 (4) establish a schedule of key milestones toward completing the
35 proposed actions;

36 (5) include a description and map of the locations where the
37 proposed actions will occur; and

38 (6) list any expected permits or approvals required by other
39 private parties, the department, or other federal, State, or local
40 government agencies to implement the plan.

41
42 5. a. A warehouse operator to which the provisions of this act
43 apply shall submit, each year, to the department, in a form and
44 manner to be determined by the department:

45 (1) the air pollution reduction and mitigation plan to be
46 implemented by the warehouse operator for the next compliance
47 period;

1 (2) an annual report, together with written evidence, detailing
2 how the warehouse operator implemented the air pollution
3 reduction and mitigation plan of the prior compliance period;

4 (3) the total warehouse area utilized by the warehouse operator;
5 and

6 (4) the total amount of semi-tractor-trailer truck traffic that
7 originated from the warehouse operations during the prior
8 compliance period, which shall be calculated using a formula
9 developed by the department pursuant to paragraph (2) of
10 subsection a. of section 6 of this act.

11 b. No later than 90 days after receipt of an air pollution
12 reduction and mitigation plan, the department shall make a
13 determination to approve the plan as submitted, approve the plan
14 with conditions, or disapprove the plan. If the air pollution
15 reduction and mitigation plan is disapproved, the department shall
16 inform the warehouse operator of the reasons for the disapproval.
17 The warehouse operator shall have 30 days thereafter to submit a
18 revised air pollution reduction and mitigation plan to the
19 department. If the department does not provide notice of its
20 determination within 90 days after its receipt of a plan or a revised
21 plan, the plan shall be deemed to have been approved, and the
22 warehouse operator shall proceed to implement the plan.

23 c. If the department determines, as a result of an audit conducted
24 pursuant to section 6 of this act, or for any other reason, that a
25 warehouse operator is not implementing an approved air pollution
26 reduction and mitigation plan, the department may rescind its
27 approval of the plan. The warehouse operator shall have 30 days
28 thereafter to submit a revised air pollution reduction and mitigation
29 plan to the department, in accordance with the provisions of
30 subsection b. of this section.

31 d. The department may charge an application fee to warehouse
32 operators for each compliance period, the timely receipt of which
33 may be a necessary condition for the approval of the warehouse
34 operator's air pollution reduction and mitigation plan, provided that
35 the total amount received from such application fees does not
36 exceed the department's administrative costs connected with the
37 implementation and enforcement of this act.

38 e. Notwithstanding the provisions of section 7 of this act to the
39 contrary, a warehouse operator covered under this act that fails to
40 submit an air pollution reduction and mitigation plan pursuant to
41 this section shall first receive a written warning. A warehouse
42 operator that receives a written warning shall submit an air
43 pollution reduction and mitigation plan to the department no later
44 than 90 days after receipt of the warning. A warehouse operator
45 that receives a written warning and that fails to submit an air
46 pollution reduction and mitigation plan within 90 days of receipt of
47 the warning shall be subject to the penalties set forth in section 7 of
48 this act.

1 6. a. (1) Each warehouse operator shall maintain records, in a
2 form prescribed by the department, that demonstrate whether and
3 how the warehouse operator has complied with the provisions of
4 this act. In particular, the records shall include the amount of semi-
5 tractor-trailer truck traffic that originates from the warehouse
6 operations.

7 (2) The department shall develop a formula, as part of the rules
8 and regulations adopted to implement this act, for calculating the
9 amount of semi-tractor-trailer truck traffic that originates from the
10 operations of a warehouse operator during a compliance period,
11 which calculations may include the number of trucks in the
12 warehouse operator's fleet, the number of deliveries or pick-ups
13 carried out by the warehouse operator, and the weight of each truck
14 in the fleet or performing a delivery or pick-up. The department
15 shall develop and publish guidelines to assist warehouse operators
16 in recording the raw data necessary to utilize the formula, and in
17 utilizing the formula.

18 b. The department may request the records required by
19 subsection a. of this section from a warehouse operator at any time.
20 A warehouse operator shall submit records to the department no
21 later than 30 days after receipt of a request, unless the department
22 extends that timeframe.

23 c. The department may audit or investigate a warehouse operator
24 at any time, to assess the warehouse operator's compliance with the
25 requirements of this act. The department may annually audit, or
26 cause to be audited, a random sample of warehouse operators in
27 order to determine compliance with the provisions of this act. A
28 warehouse operator shall cooperate fully with any audit conducted
29 pursuant to this section. The department may require a warehouse
30 operator to pay the costs of an audit conducted pursuant to this
31 section.

32 d. The department shall annually publish a list of registered
33 warehouse operators, their compliance status, and other information
34 the department deems appropriate on the department's Internet
35 website.

36
37 7. a. Whenever, on the basis of available information, the
38 commissioner finds that a person is in violation of this act, the
39 commissioner may take one or more of the following actions:

40 (1) issue an order in accordance with subsection b. of this
41 section requiring the person to comply;

42 (2) bring a civil action in accordance with subsection c. of this
43 section;

44 (3) levy a civil administrative penalty in accordance with
45 subsection d. of this section;

46 (4) bring an action for a civil penalty in accordance with
47 subsection e. of this section; or

1 (5) require a warehouse operator to submit a corrective action
2 plan pursuant to subsection f. of this section.

3 The exercise of any of the remedies provided in this section shall
4 not preclude recourse to any other remedy so provided.

5 b. Whenever, on the basis of available information, the
6 commissioner finds that a person is in violation of this act, the
7 commissioner may issue an order: (1) specifying the provision or
8 provisions of this act, or the rule or regulation adopted pursuant
9 thereto, of which the person is in violation; (2) citing the action that
10 caused the violation; (3) requiring compliance with the provision of
11 this act or the rule or regulation adopted pursuant thereto of which
12 the person is in violation; and (4) giving notice to the person of his
13 right to a hearing on the matters contained in the order.

14 c. The commissioner is authorized to commence a civil action in
15 Superior Court for appropriate relief from a violation of this act.
16 This relief may include an assessment against the violator for the
17 costs of any investigation, inspection, or audit that led to the
18 discovery and establishment of the violation, and for the reasonable
19 costs of preparing and litigating the case under this subsection.

20 d. (1) The commissioner is authorized to impose a civil
21 administrative penalty of not more than \$25,000 for each violation
22 of this act or any rule or regulation adopted pursuant thereto, and
23 each day of the violation shall constitute an additional, separate,
24 and distinct offense. Any amount imposed under this subsection
25 shall be assessed pursuant to rules and regulations adopted by the
26 commissioner for violations of similar type, seriousness, and
27 duration. The commissioner shall have the authority to assess
28 penalties prior to the establishment of rules and regulations
29 governing penalties to the extent that such penalties are reasonable
30 and based on other violations of a similar type, seriousness, and
31 duration. No civil administrative penalty shall be imposed until
32 after the person has been notified by certified mail or personal
33 service. The notice shall include: a reference to the section of the
34 act, rule, regulation, order, or permit violated; a concise statement
35 of the facts alleged to constitute a violation; a statement of the
36 amount of the civil administrative penalties to be imposed; and a
37 statement of the person's right to a hearing. The person shall have
38 20 days from receipt of the notice within which to deliver to the
39 commissioner a written request for a hearing. Subsequent to the
40 hearing and upon finding that a violation has occurred, the
41 commissioner may issue a final order or civil administrative penalty
42 after imposing the amount of the fine specified in the notice. If no
43 hearing is requested, the notice shall become a final order or a final
44 civil administrative penalty upon the expiration of the 20-day
45 period. Payment of the penalty is due when a final order is issued
46 or when the notice becomes a final order or a final civil
47 administrative penalty. The authority to levy a civil administrative
48 penalty is in addition to all other enforcement provisions in this act,

1 and the payment of a civil administrative penalty shall not be
2 deemed to affect the availability of any other enforcement provision
3 in connection with the violation for which the penalty is levied. A
4 civil administrative penalty imposed under this subsection may be
5 compromised by the commissioner upon the posting of a
6 performance bond by the violator, or upon terms and conditions the
7 commissioner may establish by rule or regulation.

8 (2) In addition to the assessment of a civil administrative
9 penalty, the commissioner may, by administrative order and upon
10 an appropriate finding, assess a violator for the reasonable costs of
11 any investigation, inspection, or audit which led to the
12 establishment of the violation.

13 e. Any person who violates this act, an order issued pursuant to
14 subsection b. of this section, or a court order issued pursuant to
15 subsection c. of this section, or who fails to pay in full a civil
16 administrative penalty levied pursuant to subsection d. of this
17 section, shall be subject, upon order of a court, to a civil penalty not
18 to exceed \$25,000, and each day of the violation shall constitute an
19 additional, separate, and distinct offense. Any penalty imposed
20 pursuant to this subsection may be collected, and any costs incurred
21 in connection therewith may be recovered, in a summary
22 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
23 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the
24 municipal court shall have jurisdiction to enforce the "Penalty
25 Enforcement Law of 1999."

26 f. The department is authorized to require a warehouse
27 operator that violates the provisions of this act, or any rule or
28 regulation adopted pursuant thereto, to submit a corrective action
29 plan describing how the warehouse operator intends to come into
30 compliance with the provisions of this act. The department shall
31 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
32 c.410 (C.52:14B-1 et seq.), rules and regulations setting forth the
33 substantive requirements for corrective action plans.

34 g. In addition to the penalties and remedies provided above, a
35 person who knowingly, purposely, or recklessly makes a false or
36 misleading statement on any certification or plan submitted to the
37 department pursuant to this act shall, upon conviction, be guilty of a
38 crime of the third degree and, notwithstanding the provisions of
39 N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000
40 and restitution. The department shall refer the provider of any false
41 or misleading statement to the Attorney General for prosecution.

42
43 8. The Commissioner of Environmental Protection shall adopt
44 rules and regulations, pursuant to the "Administrative Procedure
45 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to
46 implement the provisions of this act.

1 9. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill would require certain warehouse operators to implement
7 an air pollution reduction and mitigation plan (APRM plan),
8 beginning 36 months after the bill's effective date.

9 Specifically, the bill would apply to warehouse operators that
10 utilize at least 50,000 square feet of warehouse space in at least one
11 warehouse that is at least 100,000 square feet in size. The bill
12 defines a "warehouse operator" as an entity that conducts day-to-
13 day operations at a warehouse, including operations conducted
14 through the use of third-party contractors, which entity may or may
15 not be the owner of the warehouse. The bill would prohibit
16 applicable warehouse operators from conducting warehousing
17 operations in New Jersey, unless they implement an APRM plan
18 approved by the Department of Environmental Protection (DEP).

19 The bill would direct the DEP to develop, no later than 24
20 months after the bill's effective date, a template for the standard
21 APRM plan. In order to implement the standard plan, warehouse
22 operators would first need to determine the amount of truck traffic
23 that originates from their operations using a formula to be
24 developed by the DEP, as well as the square footage of warehouse
25 space they utilize. Then, warehouse operators would use those
26 figures in another formula, also to be developed by the DEP, to
27 determine the number of air pollution reduction and mitigation
28 points (APRM points) they need to accrue during the following
29 year. Warehouse operators would be able to accrue APRM points
30 through various activities – including purchasing low- or zero-
31 emissions vehicles, installing solar panels, or installing air filters at
32 certain buildings in the municipalities in which they operate – as
33 enumerated in subsection b. of section 3 of the bill. APRM points
34 could also be accrued by depositing moneys in the Plug-in Electric
35 Vehicle Incentive Fund established pursuant to section 7 of
36 P.L.2019, c.362 (C.48:25-7).

37 Warehouse operators may also comply with the bill's provisions
38 by submitting a custom APRM plan to the DEP. The custom
39 APRM would be required to state the actions to be taken by the
40 warehouse operator to reduce or mitigate air pollution caused by the
41 warehouse operator, as well as conform to other minimum standards
42 established in subsection b. of section 4 of the bill.

43 The bill would require warehouse operators to submit to the DEP
44 each year the APRM plan to be implemented for the next year and
45 an annual report detailing the actions taken during the previous
46 year. The DEP would have 90 days to approve, conditionally
47 approve, or disapprove the plan.

1 The bill would also require warehouse operators to retain records
2 that demonstrate whether and how they have complied with the
3 bill's provisions. In particular, warehouse operators would be
4 required to retain records that evidence the amount of truck traffic
5 generated by the warehouse operator. The bill would require the
6 DEP to develop guidelines to assist warehouse operators with this
7 task. The bill would authorize the DEP to request the records
8 retained by warehouse operators, as well as to audit warehouse
9 operators, for cause or randomly. The bill would direct the DEP to
10 publish the warehouse operators covered under the bill and their
11 compliance status on its website.

12 A person who violates the provisions of the bill would be subject
13 to a civil administrative penalty of up to \$25,000 for each violation.
14 The amount of any civil administrative penalty would be assessed
15 pursuant to rules and regulations adopted by the DEP for violations
16 of similar type, seriousness, and duration. A person who violates
17 the provisions of the bill, and any order issues pursuant thereto, or
18 who fails to pay in full a civil administrative penalty, would be
19 subject, upon order of a court, to a civil penalty not to exceed
20 \$25,000. Civil penalties would be imposed and recovered in a
21 summary proceeding pursuant to the "Penalty Enforcement Law of
22 1999." In addition to these penalties, a person who knowingly,
23 purposely, or recklessly makes a false or misleading statement to
24 the DEP on any certification or registration would be guilty of a
25 crime of the third degree and subject to a fine of up to \$50,000 and
26 restitution. The bill also establishes other remedies and
27 enforcement mechanisms.