

SENATE, No. 3970

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 16, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

16
17 4. a. A warehouse operator may comply with the provisions of
18 this act by implementing a custom air pollution reduction and
19 mitigation plan, provided that the plan has been approved by the
20 department pursuant to section 5 of this act.

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

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

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

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

32 (4) establish a schedule of key milestones toward completing the
33 proposed actions;

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

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

39
40 5. a. A warehouse operator to which the provisions of this act
41 apply shall submit, each year, to the department, in a form and
42 manner to be determined by the department:

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

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

1 (3) the total warehouse area utilized by the warehouse operator;
2 and

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

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

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

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

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

46

47 6. a. (1) Each warehouse operator shall maintain records, in a
48 form prescribed by the department, that demonstrate whether and
49 how the warehouse operator has complied with the provisions of

1 this act. In particular, the records shall include the amount of semi-
2 tractor-trailer truck traffic that originates from the warehouse
3 operations.

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

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

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

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

33

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

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

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

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

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

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

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

- 1 b. Whenever, on the basis of available information, the
2 commissioner finds that a person is in violation of this act, the
3 commissioner may issue an order: (1) specifying the provision or
4 provisions of this act, or the rule or regulation adopted pursuant
5 thereto, of which the person is in violation; (2) citing the action that
6 caused the violation; (3) requiring compliance with the provision of
7 this act or the rule or regulation adopted pursuant thereto of which
8 the person is in violation; and (4) giving notice to the person of his
9 right to a hearing on the matters contained in the order.
- 10 c. The commissioner is authorized to commence a civil action in
11 Superior Court for appropriate relief from a violation of this act.
12 This relief may include an assessment against the violator for the
13 costs of any investigation, inspection, or audit that led to the
14 discovery and establishment of the violation, and for the reasonable
15 costs of preparing and litigating the case under this subsection.
- 16 d. (1) The commissioner is authorized to impose a civil
17 administrative penalty of not more than \$25,000 for each violation
18 of this act or any rule or regulation adopted pursuant thereto, and
19 each day of the violation shall constitute an additional, separate,
20 and distinct offense. Any amount imposed under this subsection
21 shall be assessed pursuant to rules and regulations adopted by the
22 commissioner for violations of similar type, seriousness, and
23 duration. The commissioner shall have the authority to assess
24 penalties prior to the establishment of rules and regulations
25 governing penalties to the extent that such penalties are reasonable
26 and based on other violations of a similar type, seriousness, and
27 duration. No civil administrative penalty shall be imposed until
28 after the person has been notified by certified mail or personal
29 service. The notice shall include: a reference to the section of the
30 act, rule, regulation, order, or permit violated; a concise statement
31 of the facts alleged to constitute a violation; a statement of the
32 amount of the civil administrative penalties to be imposed; and a
33 statement of the person's right to a hearing. The person shall have
34 20 days from receipt of the notice within which to deliver to the
35 commissioner a written request for a hearing. Subsequent to the
36 hearing and upon finding that a violation has occurred, the
37 commissioner may issue a final order or civil administrative penalty
38 after imposing the amount of the fine specified in the notice. If no
39 hearing is requested, the notice shall become a final order or a final
40 civil administrative penalty upon the expiration of the 20-day
41 period. Payment of the penalty is due when a final order is issued
42 or when the notice becomes a final order or a final civil
43 administrative penalty. The authority to levy a civil administrative
44 penalty is in addition to all other enforcement provisions in this act,
45 and the payment of a civil administrative penalty shall not be
46 deemed to affect the availability of any other enforcement provision
47 in connection with the violation for which the penalty is levied. A
48 civil administrative penalty imposed under this subsection may be
49 compromised by the commissioner upon the posting of a

1 performance bond by the violator, or upon terms and conditions the
2 commissioner may establish by rule or regulation.

3 (2) In addition to the assessment of a civil administrative
4 penalty, the commissioner may, by administrative order and upon
5 an appropriate finding, assess a violator for the reasonable costs of
6 any investigation, inspection, or audit which led to the
7 establishment of the violation.

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

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

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

37
38 8. The Commissioner of Environmental Protection shall adopt
39 rules and regulations, pursuant to the "Administrative Procedure
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to
41 implement the provisions of this act.

42
43 9. This act shall take effect immediately.
44
45

46 STATEMENT
47

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

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

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

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

38 The bill would require warehouse operators to submit to the DEP
39 each year the APRM plan to be implemented for the next year and
40 an annual report detailing the actions taken during the previous
41 year. The DEP would have 90 days to approve, conditionally
42 approve, or disapprove the plan.

43 The bill would also require warehouse operators to retain records
44 that demonstrate whether and how they have complied with the
45 bill's provisions. In particular, warehouse operators would be
46 required to retain records that evidence the amount of truck traffic
47 generated by the warehouse operator. The bill would require the
48 DEP to develop guidelines to assist warehouse operators with this
49 task. The bill would authorize the DEP to request the records

1 retained by warehouse operators, as well as to audit warehouse
2 operators, for cause or randomly. The bill would direct the DEP to
3 publish the warehouse operators covered under the bill and their
4 compliance status on its website.

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