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Environmental Alert

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Southern California warehouses face proposed moratoriums and pending air emission mitigation deadlines

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As warehouse development increases, air quality decreases. California is struggling to find a balance.



What's the Impact

- / The Warehouse Actions and Investments to Reduce Emissions Program deadline was recently extended to 11:59 pm on March 2, 2023, likely due, in part, to ongoing litigation with the South Coast Air Quality Management District to stop it.
- / Several environmental, labor, and community groups called on the State of California to effectuate a moratorium on warehouse construction in the Inland Empire.
- / Imposing a moratorium on distribution centers and warehouses and/or charging large penalties will raise the cost of goods.

A steady increase in commercial and industrial warehouse development in Southern California, particularly within the Inland Empire, over the past 30 years, has increased traffic, which in turn has contributed to a continued reduction in air quality through nitrogen oxide and diesel

emissions from those trucks, adversely impacting already impaired regions. This is prompting local regulatory authorities to try to take action.

[As discussed back in December 2021](#), the South Coast Air Quality Management District (SCAQMD) enacted Rule 2305, known as the Warehouse Indirect Source Rule (ISR). ISR attempted to implement the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, whereby warehouse operators would essentially be taxed an annual "mitigation fee" based on the number of trucks that visited the warehouse annually, with a complicated menu-based point system allowing warehouse operators to earn "WAIRE Points" to reduce or eliminate the fee by completing certain selectable air emission compliance and mitigation actions set forth on the "WAIRE Menu." There is also an alternative to implement an approved Custom WAIRE Plan. While only warehouse operators must earn these WAIRE Points, warehouse owners can opt-in to transfer WAIRE Points to their tenants.

Under the WAIRE Program, warehouse owners and operators submit Site Information Reports, documenting annual truck trips, operations, and compliance, which were initially set to be due January 31, 2023, for Phase 1 warehouses ($\geq 250,000$ square feet). This deadline was recently extended to 11:59 p.m. on March 2, 2023, due, in part, to ongoing litigation with SCAQMD, *California Trucking Association v. SCAQMD*, challenging the ISR and WAIRE program. There, the plaintiff California Trucking Association and Intervenor Airlines for America filed a Motion for Summary Judgement arguing that SCAQMD's power as a local regulatory authority over stationary sources (i.e., the warehouses themselves) does not extend to regulate mobile sources (i.e., the trucks visiting them) and such proposed extension by the WAIRE Program is prohibited under preemption. For example, the California Air Resources Board (CARB) already has the Truck and Bus Rule, which regulated all on-road diesel vehicles with a gross vehicle weight rating greater than 14,000 lbs., among a number of other mobile source rules.

Without going into this complex area of air law, SCAQMD's position is that there is not current explicit case law finding that the ISR is preempted, relying on established case law for regulation of inherent indirect sources with emphasis on the multiple compliance options. In short, "truck trips are an effective and administratively efficient proxy." The parties have agreed to mediation, with deadlines of May 5, 2023, to File Notice of Settlement or Joint Report re Settlement.

There is no doubt that SCAQMD's WAIRE Program is controversial, complicated, and trailblazing. While warehouse operators in the region appreciate the extra four or so weeks, an extension that aligned with the May settlement deadline would make more pragmatic sense, to provide certainty to warehouse operators whether the WAIRE Program will even survive in its current iteration.

Regardless, additional struggles are anticipated by warehouse operators, as several environmental, labor, and community groups called on the State of California to effectuate a moratorium on warehouse construction in the Inland Empire, also focused on the negative impacts on air quality. In an open letter to Governor Gavin Newsom, issued on January 24, 2023, proponents of the moratorium characterized the expansion of the logistics industry as "one of the most critical environmental justice issues of our time." Coming on the heels of similar

moratoriums placed on warehousing construction by several Inland Empire cities, including Colton, Norco, and Pomona, proponents of the moratorium focus on air quality and pollution exposure issues linked to warehouse operations, as well as the diesel trucks that travel to and from these warehouses.

However, and as county officials have pointed out, a moratorium on warehouses or similar widespread construction bans fail to address critical factors that affect local, regional, and statewide supply chain. These warehouses and other logistics-based businesses are being built in these areas due to consumer demand for goods with near instant shipping. To meet demand, retailers and distributors must expand distribution operations to remain competitive, especially in populous regions throughout Southern California. Imposing a moratorium on distribution centers and warehouses and/or taxing them simply will raise the cost of goods and negatively impact consumers, some of which live in these same impacted communities. To get a product within a day, let alone within an hour, equates to a certain amount of negative air emissions, leading to adverse health impacts. It is a cycle that is unlikely to be broken by moratoriums, complicated point systems, or fees, but instead could be addressed through incentives and grants to implement mitigation measures, as well as patience and education for the local consumers.

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