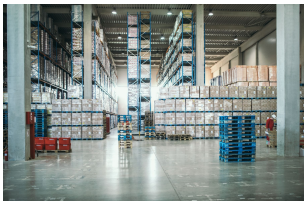

How California Warehouse Owners and Operators Can Prepare for Rule 2305 Enforcement

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September 2024 update: *The U.S. Environmental Protection Agency (EPA) has approved the South Coast Air Quality Management District's* ***Rule 2305****—also known as the Warehouse Indirect Source Rule—as part of California's implementation plan. The U.S. EPA's approval will empower Rule 2305 enforcement under the Clean Air Act.*

This decision sets a precedent for other regions to tackle emissions, especially in the absence of sweeping federal mandates. Details about Rule 2305, which targets reducing nitrogen oxides and particulate matter emissions from warehouses, can be found below.

South Coast AQMD's Rule 2305

In May 2021, the South Coast Air Quality Management District (SCAQMD) introduced Rule 2305 – the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program. It requires warehouses larger than 100,000 square feet to reduce nitrogen oxide and particulate matter (PM 2.5) emissions from diesel trucks.

Rule 2305 requires warehouse owners and operators to earn a specific annual number of points from a menu, a custom plan, or by paying fees into a mitigation fund. The number of points required depends on the number of diesel truck trips during each 12-month compliance period. Warehouse owners and operators must submit annual reports to SCAQMD.

SCAQMD Now Intends to Enforce Rule 2305

According to SCAQMD records, diesel emissions from warehouse-related truck trips generate millions of pounds of carbon dioxide and nitrogen oxide, negatively impacting the surrounding communities' air quality. As SCAQMD's Executive Officer Wayne

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Nastri stated in a press release issued September 20, 2023, "Communities near [warehouses] deserve to breathe clean air and our enforcement teams will work quickly to ensure that the facilities come into compliance as quickly as possible."

Since 2021, SCAQMD has been identifying warehouses subject to Rule 2305 and has offered compliance information and help. However, SCAQMD reports that of the estimated 2,000 warehouses subject to the rule, 1,400 of those are believed to be out of compliance.

"Time is up for those not complying with our rule," said Nastri.

U.S. EPA's Proposed Approval of Rule 2305

On October 12, 2023, the U.S. Environmental Protection Agency (EPA) expressed its intent to approve SCAQMD Rule 2305 to include the WAIRE credits to regulate air emissions as part of California's implementation plan under the federal Clean Air Act (CAA). If approved, a citizen plaintiff can bring a federal lawsuit under the CAA to compel Rule 2305 compliance. If successful, a citizen plaintiff can seek rule compliance and recovery of attorneys' fees and costs as enhanced by a multiplier if the government does not pursue enforcement.

U.S. EPA is accepting comments to its notice of intent until November 12, 2023.

Warehouse Owners and Operators Need to Act Now

Our environmental team is assisting warehouse owners and operators in evaluating whether Rule 2305 is applicable to their operations and confirming their compliance. The rule has some "gray" areas— for instance, the definition of "warehouse" usage may encompass a joint-use arrangement, such as manufacturing with a warehouse component, where goods are stored for distribution to businesses and/or retail customers. While the compliance period has already commenced for larger warehouses (150,000 square feet or greater), the initial compliance period for warehouses between 100,000 square feet to 150,000 square feet will begin in 2024.

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We are also currently advising warehouse clients on traffic count compliance, WAIRE credits and available mitigation options. As SCAQMD is prepares to enforce WAIRE, it's time for warehouse owners and operators to get into rule compliance. For more information and assistance navigating these new requirements, contact Thierry Montoya of Frost Brown Todd's Environmental practice group.

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