

AB 701 Continues the Recent Trend in California to Regulate Warehouse Distribution Centers

In 2021, warehouse distribution centers were at the forefront of California law, regulations, and environmental initiatives. These efforts seek to regulate labor practices of warehouse operators and the environmental impacts caused by the expansion and concentration of distribution centers over the last decade. This article summarizes AB 701 and other initiatives in California targeting warehouse distribution operations.

AB 701

Signed into law by Governor Newsom on September 22, 2021, AB 701 makes California the first (and only) state to regulate quotas used by warehouse employers. Although targeted at large employers such as Amazon and Wayfair, AB 701 affects all businesses that employ 100 or more employees at a single distribution center or 1,000 or more total warehouse employees in California. The term “warehouse distribution center” does not include the warehousing or storage of farm products. Under AB 701, warehouse employees must be provided with a written description of the quotas to which the employee is subject. Common quotas include the number of tasks the employee is required to perform, the materials to be produced or handled, and any adverse employment action that may result from a failure to meet the quota.

AB 701 further provides that employees are not required to meet any quota that prevents compliance with meal or rest periods, use of bathroom facilities, or occupational health and safety laws. To that end, employers are prohibited from taking adverse action against an employee that fails to meet a quota that violates such laws, or fails to meet undisclosed quotas. If a current or former employee believes that meeting a quota caused a violation of occupational health or safety laws or prevented compliance with meal or rest periods, the employee may request a written copy of the quotas and the employee’s most recent 90-day personal work speed data. The employee may also bring an action for injunctive relief and may, upon prevailing, recover costs and reasonable attorney’s fees.

SCAQMD Rule 2305

On May 7, 2021, the South Coast Air Quality Management

by Robin R. Baral & Jillian Ames



District (SCAQMD) adopted [Indirect Source Rule 2305](#). Rule 2305 is a continuation of SCAQMD's decades-long effort to curb truck emissions. Rule 2305 is different from previous efforts, however, because it indirectly targets truck emissions by regulating warehouse operators. In addition, Rule 2305 requires owners, who often have little control over warehouse operations, to submit a Warehouse Operations Notification, which may require owners to provide information about warehouse operations that they normally do not have access to.

Under SCAQMD Rule 2305 and Rule 316, warehouse operators are required to earn a specified number of points, known as WAIRE points, to offset the environmental costs of increased nitrogen oxide and particulate matter emissions. WAIRE points are earned in several ways, through: (1) emission-reducing activities, such as purchasing zero-emission trucks; (2) adoption of a facility-specific emissions reduction plan; or (3) direct payment of mitigation fees to SCAQMD.

CEQA Litigation

The California Attorney General's office has become actively involved in warehouse projects throughout the state and has recommended a suite of mitigation measures to address air quality, noise, traffic, and other impacts that must be analyzed under the California Environmental Quality Act (CEQA). These recent efforts seem largely motivated by the state's renewed focus on environmental justice, in response to claims that distribution centers are disproportionately causing increased pollution, noise, and traffic in low-income, minority neighborhoods, often where other polluting facilities already exist.

The Clean Air Resources Board (CARB) also recommends mitigation measures to address air quality associated with the construction and operation of warehouse distribution centers. In most cases, local jurisdictions are imposing mitigation measures for large warehouse projects, such as the use of zero-emission vehicles (ZEVs) and the installation of electric charging stations. Such mitigation measures are often imposed in furtherance of a city or county's Climate Action Plan.

On July 23, 2021, however, Attorney General Bonta filed a lawsuit against the City of Fontana challenging its approval of a relatively small warehouse project. The lawsuit remains in the early stages of litigation: the City was served in early August, and the petitioners filed a request for a hearing date in early September. The project borders a public high school and is located in one of the most polluted areas in the state. The lawsuit alleges that the City of Fontana violated CEQA by failing to prepare an environmental impact report. The lawsuit also alleges that the City did not impose any mitigation measures on the project to address air quality impacts, and that the City improperly analyzed the cumulative effects of nearby warehouses. Warehouse developers should therefore be mindful of developing a CEQA strategy that imposes reasonable mitigation measures, rather than suffering an easy challenge by the Attorney General if no air quality mitigation is imposed. Developers within SCAQMD's jurisdiction should develop a CEQA strategy that maximizes participation in WAIRE to address the air quality impacts of a project.

Conclusion

In California, the legal landscape of air quality enforcement and mitigation under the Clean Air Act and CEQA will likely continue to evolve, as will efforts to regulate warehouse distribution operations by the state legislature. Please contact our office if you have questions about how any of the above initiatives may affect warehouse development in your particular jurisdiction, or to develop strategies for effectively complying with state labor laws and environmental review under CEQA.

For more information, please contact:

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