

# Now & Next

## Environmental Alert

January 4, 2024

### **Boxed in: Hundreds of warehouses receive notices of violation**

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As Warehouse Indirect Source Rule enforcement ramps up, companies operating warehouses must prepare strategies to respond to NOVs.



#### **What's the impact?**

- The NOVs issued allege that each day a violation occurs may be handled as a separate offense
- Violations may result in civil or criminal penalties up to \$10,000 for each day of noncompliance
- Owners and operators of warehouses in the South Coast of California must prepare their Initial Site Information Reports due in 2024

The South Coast Air Quality Management District (SCAQMD) previously enacted Rule 2305, known as the [Warehouse Indirect Source Rule \(ISR\)](#), as part of the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program in its efforts to [curb contributions to air emissions](#) from mobile sources (i.e., trucks) traveling to and from stationary sources (i.e., warehouses) throughout Southern California. At a high level, the stationary source rules already in effect are not sufficient to meet the air quality attainment goals for fine particulate matter

(PM2.5) and nitrogen oxides in the South Coast Air Basin (Basin), so the SCAQMD invoke a rarely used provision from the federal Clean Air Act (CAA), the ISR, to regulate the impact of indirect sources (like trucks) by regulating the stationary facilities (like warehouses) that benefit from those indirect sources. An indirect source is a “facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution.” (42 U.S.C. § 7410(a)(5)(C)).

## **Legal challenges to the Warehouse ISR**

The California Trucking Association (CTA) and Airlines for America (AA) legally challenged the Warehouse ISR in the United States District Court, Central District of California. Over a year later, and after the United States Environmental Protection Agency (USEPA) announced a proposal to add the Warehouse ISR to the State Implementation Plan (SIP), essentially eviscerating the preemption argument that the CTA and AA focused on, the district court finally ruled in December 2023 in favor of SCAQMD, upholding the Warehouse ISR. Based on this ruling, on December 28, 2023, CTA, AA, and SCAQMD jointly agreed to the dismissal of all remaining state-based claims by January 2024.

## **SCAQMD issues notices of violation**

In an immediate response to celebrate its victory, SCAQMD issued more than 100 notices of violation (NOV) to various warehouse operators of 250,000 square feet or more throughout Southern California. These NOVs allege violations for failure to timely submit an Annual WAIRE Report by March 2, 2023, and/or failure to timely submit an Initial Site Information Report (ISIR) by July 5, 2022. The NOVs clearly allege that each day a violation occurs may be handled as a separate offense regardless of whether additional NOVs are issued and that such violations may result in civil or criminal penalties up to \$10,000 for each day of noncompliance, with increased penalties that may be warranted for aggravating factors.

## **ISIR due dates**

Phase 2 warehouses of 150,000–249,000 square feet had their ISIR due July 5, 2023, and their first Annual WAIRE Report for 2023 is due January 31, 2024. For Phase 3 warehouses of 100,000 to <150,000 square feet, the ISIR is due July 1, 2024, and the AWR for 2024 is due January 31, 2025.

## **Responding to notices of violation**

If your company operates a warehouse and received an NOV, it is important that you contact counsel and prepare a strategy to respond, as penalties may be significant. If you operate or own a warehouse in the South Coast of California, the time is now to read up on the Warehouse ISR and prepare submissions.



Further, with this legal win regarding the enforceability of indirect source rules, other agencies, including the San Diego Air Pollution Control District, are rolling out similar rules, with anticipated impacts on ports, warehouses, and distribution centers.

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