

# Client Alert

Environmental, Health and Safety

**SEPTEMBER 25, 2024**

For more information,  
contact:

Ilana Saltzbar  
+1 202 626 3745  
[isaltzbar@kslaw.com](mailto:isaltzbar@kslaw.com)

Amina S. Dammann  
+1 512 457 2002  
[adamann@kslaw.com](mailto:adamann@kslaw.com)

King & Spalding

Washington, D.C.  
1700 Pennsylvania Avenue,  
NW  
Suite 900  
Washington, D.C. 20006  
Tel. +1 202 737 0500

Austin  
500 West 2nd Street  
Suite 1800  
Austin, TX 78701  
Tel. +1 512 457 2000

## EPA Approves Indirect Source Rule to Reduce Emissions from Warehouses in Southern California Air District, Potentially Paving the Way for Other Air Regulators Across the United States to Issue Similar Rules

On September 11, 2024, the U.S. Environmental Protection Agency (“EPA”) approved under the Clean Air Act (“CAA”) an indirect source rule that is intended to reduce emissions associated with warehouses located within the South Coast Air Quality Management District, in Southern California. The air district has taken a novel approach to addressing pollution from mobile sources used in connection with warehouses by regulating the facility. Warehouse operators must earn a certain number of points to meet an annual compliance obligation, or if falling short of the required points, pay a fee. To determine the required number of points for a warehouse, the rule considers the number of truck trips entering or exiting the warehouse, instead of relying on the existing exhaust emission standards applicable to on-road trucks and non-road engines typically used in equipment operated in a warehouse. This indirect source rule relates to air quality standards for ozone and fine PM in areas around warehouses. EPA asserts that the warehouse rule is federally enforceable by the air district, EPA, and through citizen suits under CAA section 304. It is possible that other state regulators may follow the air district’s example and issue similar rules regulating indirect emissions associated with activities at warehouses or other facilities. In addition, EPA’s final rule emphasizes EPA’s right to enforce such indirect source rules from a district if the regulated facility does not comply. EPA’s final rule will become effective on October 11, 2024.



### 1. No federal preemption

EPA notes in the final rule that implementation of the air district's indirect source rule is not preempted, or otherwise prohibited, under any state or federal law. 89 Fed. Reg. 73,568, 73,569 (Sept. 11, 2024). This comes after the air district's rule survived legal challenge in a California federal court. See *California Trucking Association v. South Coast Air Quality Management District*, Case No. 21-cv-06341, Judgment, Dkt. Nos. 167 and 168, January 18, 2024 (C.D. Cal.). <https://docs.justia.com/cases/federal/district-courts/california/cacdce/2:2021cv06341/827779/168> (finding no preemption under the CAA, Airline Deregulation Act and Federal Aviation Administration Authorization Act and dismissing remaining claims based on party stipulation). EPA explains in response to comments that the air district has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines that would be preempted by CAA section 209(a). 89 Fed. Reg. at 73,573-74. Instead, as EPA concludes, the air district's indirect source rule is designed to regulate at the level of the indirect source, i.e. the warehouse site. *Id.* In addition, in arguing against CAA preemption, EPA states that the air district's indirect source rule applies to warehouse operators (not truck or engine manufacturers), and provides multiple options for meeting the annual compliance obligation, a metric that is based not on truck emissions but on truck trips. *Id.* at 73,574. EPA further notes that the various options available to comply with the annual compliance obligation do not involve the acquisition of Zero Emissions ("ZE") or Near Zero Emissions ("NZE") trucks, which further supports the conclusion that the air district's indirect source rule does not enforce any emission standards of new motor vehicles or engines. *Id.* While these, and similar, remarks cannot stop others from challenging EPA's final rule, EPA is positioning itself to fend off potential legal arguments.

### 2. Description of the Air District's Indirect Source Rule

The air district's indirect source rule, Rule 2305, applies to owners and operators of warehouses in the district where the warehouse consists of greater than 100,000 sq ft of indoor floor space in a single building of which at least 50,000 sq ft are operated for warehousing activities. 89 Fed. Reg. at 73,569; Rule 2305(d)(1) (available at <https://www.aqmd.gov/docs/default-source/rule-book/reg-xxiii/r2305.pdf?sfvrsn=15>).

This indirect source rule requires warehouse operators to earn a certain number of points to meet an annual compliance obligation. To earn points, a facility operator can choose from different qualifying actions listed in a menu. 89 Fed. Reg. at 73,569. Menu items include acquiring/installing or using the following: ZE/NZE trucks in the warehouse operator fleet (as the terms are defined in the California Code of Regulations); ZE/NZE truck visits; ZE yard trucks; ZE charging/fueling infrastructure; onsite solar panels; or particulate filters at nearby schools or other sensitive land uses. See Table 3 in Rule 2305. There is also the option to seek approval of a custom plan. See Rule 2035(d)(4)(B). The annual compliance obligation can further be met, in its entirety or in part, by paying a mitigation fee of \$1,000 per point. See Rule 2305(d)(5). The number of points needed to meet the annual obligation is calculated for each operator, in part, based on the weighted number of annual truck trips. See Rule 2035(d)(1); 89 Fed. Reg. at 73,569.

The district can use funds received through the mitigation fee payments to incentivize the purchase of ZE/NZE trucks and related charging/fueling infrastructure in the communities near the warehouses that paid the fee.

### 3. Outlook

Warehouse operators, as well as truck and engine manufacturers, should monitor whether other air regulators across the United States will follow and issue similar indirect source rules. Early involvement in the legislative process may provide



opportunities to shape any new rules. Monitoring will also be important to ensure compliance with any new indirect source rules given the enforcement risk, or to evaluate potential legal challenges against a new rule.

\*\*\*

King & Spalding has significant expertise counseling clients on all facets of the Clean Air Act and EPA's mobile source regulations, including representing clients in regulatory counseling related to EPA and CARB rules, in enforcement investigations initiated by EPA and CARB and defending related actions by EPA, the U.S. Department of Justice, and the California Attorney General, and in litigation on challenges to EPA's rules.

---

### ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.