
SECOND SUBSTITUTE HOUSE BILL 1663

State of Washington

67th Legislature

2022 Regular Session

By House Appropriations (originally sponsored by Representatives Duerr, Fitzgibbon, Ryu, Berry, Leavitt, Ramel, Thai, Walen, Valdez, Goodman, Gregerson, Macri, Peterson, Slatter, Tharinger, Kloba, Pollet, Harris-Talley, and Hackney)

1 AN ACT Relating to reducing methane emissions from landfills;
2 amending RCW 70A.65.080 and 70A.15.1010; reenacting and amending RCW
3 70A.15.3160; adding a new chapter to Title 70A RCW; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Active municipal solid waste landfill" means a municipal
10 solid waste landfill that has accepted or is accepting solid waste
11 for disposal and has not been closed in accordance with the
12 requirements set forth in WAC 173-351-500 as it existed on January
13 10, 2022.

14 (2) "Air pollution" is presence in the outdoor atmosphere of one
15 or more air contaminants in sufficient quantities and of such
16 characteristics and duration as is, or is likely to be, injurious to
17 human health, plant or animal life, or property, or which
18 unreasonably interfere with enjoyment of life and property. For the
19 purpose of this chapter, air pollution does not include air
20 contaminants emitted in compliance with chapter 17.21 RCW.

21 (3) "Ambient air" means the surrounding outside air.

1 (4) "Authority" means any air pollution control agency whose
2 jurisdictional boundaries are coextensive with the boundaries of one
3 or more counties.

4 (5) "Closed municipal solid waste landfill" means a municipal
5 solid waste landfill that is no longer accepting solid waste for
6 disposal and has been closed in accordance with the requirements set
7 forth in WAC 173-351-500 as it existed on January 10, 2022.

8 (6) "Department" means the department of ecology.

9 (7) "Emission" means a release of air contaminants into the
10 ambient air.

11 (8) "Gas collection system" means any system that employs various
12 gas collection wells and connected piping, and mechanical blowers,
13 fans, pumps, or compressors to create a pressure gradient and
14 actively extract landfill gas.

15 (9) "Gas control device" means any device used to dispose of or
16 treat collected landfill gas including, but not limited to, enclosed
17 flares, internal combustion engines, boilers and boiler-to-steam
18 turbine systems, fuel cells, and gas turbines.

19 (10) "Gas control system" means any system that disposes of or
20 treats collected landfill gas by one or more of the following means:
21 Combustion; gas treatment for subsequent sale, or sale for processing
22 offsite, including for transportation fuel and injection into a
23 natural gas pipeline.

24 (11) "Municipal solid waste landfill" means a discrete area of
25 land or an excavation that receives household waste and that is not a
26 land application site, surface impoundment, injection well, or pile.

27 (12) "Person" means an individual, firm, public or private
28 corporation, association, partnership, political subdivision of the
29 state, municipality, or governmental agency.

30 NEW SECTION. **Sec. 2.** (1) This chapter applies to all municipal
31 solid waste landfills that received solid waste after January 1,
32 1977, except as provided in subsection (2) of this section.

33 (2) This chapter does not apply to the following landfills:

34 (a) Landfills that receive only hazardous waste, or are currently
35 regulated under the comprehensive environmental response,
36 compensation, and liability act, 42 U.S.C. chapter 103; and

37 (b) Landfills that receive only inert waste or nondecomposable
38 wastes.

1 (3) The department must adopt rules to implement this chapter.
2 The rules adopted by the department must be informed by landfill
3 methane regulations adopted by the California air resources board,
4 the Oregon environmental quality commission, and the United States
5 environmental protection agency.

6 NEW SECTION. **Sec. 3.** (1) Each owner or operator of an active
7 municipal solid waste landfill having fewer than 450,000 tons of
8 waste in place must submit an annual waste in place report to the
9 department or local authority pursuant to section 7 of this act.

10 (a) The waste in place report must be prepared for the period of
11 January 1st through December 31st of each year. The report must be
12 submitted to the department or local authority during the subsequent
13 calendar year, with the date of submission to be established by rule
14 as adopted by the department.

15 (b) The waste in place report must be submitted annually until
16 either:

17 (i) The municipal solid waste landfill reaches a size greater
18 than or equal to 450,000 tons of waste in place; or

19 (ii) The owner or operator submits a closure notification
20 pursuant to section 7 of this act.

21 (2) Each owner or operator of a municipal solid waste landfill
22 having greater than or equal to 450,000 tons of waste in place must
23 calculate the landfill gas heat input capacity pursuant to section 8
24 of this act and the department's implementing rules and must submit a
25 landfill gas heat input capacity report to the department or local
26 authority.

27 (a) If the calculated landfill gas heat input capacity is less
28 than 3,000,000 British thermal units per hour recovered, the owner or
29 operator must:

30 (i) Recalculate the landfill gas heat input capacity annually
31 using the procedures specified in section 8 of this act and the
32 department's implementing rules; and

33 (ii) Submit an annual landfill gas heat input capacity report to
34 the department or local authority until either of the following
35 conditions are met:

36 (A) The calculated landfill gas heat input capacity is greater
37 than or equal to 3,000,000 British thermal units per hour recovered;
38 or

1 (B) If the municipal solid waste landfill is active, the owner or
2 operator submits a closure notification pursuant to section 7 of this
3 act.

4 (b) If the landfill gas heat input capacity is greater than or
5 equal to 3,000,000 British thermal units per hour recovered, the
6 owner or operator must either:

7 (i) Comply with the requirements of this chapter and the
8 department's implementing rules; or

9 (ii) Demonstrate to the satisfaction of the department or local
10 authority that after four consecutive quarterly monitoring periods
11 there is no measured concentration of methane of 200 parts per
12 million by volume or greater using the instantaneous surface
13 monitoring procedures specified in section 8 of this act and the
14 department's implementing rules. Based on the monitoring results, the
15 owner or operator must do one of the following:

16 (A) If there is any measured concentration of methane of 200
17 parts per million by volume or greater from the surface of an active,
18 inactive, or closed municipal solid waste landfill, comply with this
19 chapter and the department's implementing rules adopted pursuant to
20 section 2 of this act;

21 (B) If there is no measured concentration of methane of 200 parts
22 per million by volume or greater from the surface of an active
23 municipal solid waste landfill, recalculate the landfill gas heat
24 input capacity annually as required in (a) of this subsection until
25 such time that the owner or operator submits a closure notification
26 pursuant to section 7 of this act and the department's implementing
27 rules adopted pursuant to section 2 of this act; or

28 (C) If there is no measured concentration of methane of 200 parts
29 per million by volume or greater from the surface of a closed or
30 inactive municipal solid waste landfill, the requirements of this
31 chapter and the department's implementing rules adopted pursuant to
32 section 2 of this act no longer apply, provided that the following
33 information is submitted to and approved by the department or local
34 authority:

35 (I) A waste in place report pursuant to section 7 of this act and
36 the department's implementing rules adopted pursuant to section 2 of
37 this act; and

38 (II) All instantaneous surface monitoring records.

1 NEW SECTION. **Sec. 4.** (1) The owner or operator of any municipal
2 solid waste landfill that has a calculated landfill gas heat input
3 capacity greater than or equal to 3,000,000 British thermal units per
4 hour recovered must install a gas collection and control system that
5 meets the requirements of this section and the department's
6 implementing rules adopted pursuant to section 2 of this act, unless
7 the owner or operator demonstrates to the satisfaction of the
8 department or local authority that after four consecutive quarterly
9 monitoring periods there is no measured concentration of methane of
10 200 parts per million by volume or greater using the instantaneous
11 surface monitoring procedures specified in section 8 of this act and
12 the department's implementing rules adopted pursuant to section 2 of
13 this act. The owner or operator of a municipal solid waste landfill
14 may partner with a third party to operate all or a portion of the gas
15 collection and control system, but the obligation to comply with the
16 requirements of this chapter, and the liability for civil penalties
17 issued pursuant to this chapter, remain the responsibility of the
18 owner or operator of the municipal solid waste landfill.

19 (2) The gas collection and control system must handle the
20 expected gas generation flow rate from the entire area of the
21 municipal solid waste landfill and must collect gas at an extraction
22 rate to comply with the surface methane emission limits set forth in
23 section 5 of this act and the department's implementing rules.

24 (3) The gas collection and control system must be designed and
25 operated so that there is no landfill gas leak that exceeds 500 parts
26 per million by volume, measured as methane, at any component under
27 positive pressure.

28 (4) The gas collection and control system, if it uses a flare,
29 must achieve a methane destruction efficiency of at least 99 percent
30 by weight and must use either an enclosed flare or, if the system
31 uses an open flare, the open flare must comply with the following
32 requirements:

33 (a) The open flare must meet the requirements of 40 C.F.R. Sec.
34 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

35 (b) An open flare installed and operating prior to August 1,
36 2022, may operate until January 1, 2032, unless the owner or operator
37 demonstrates to the satisfaction of the department or local authority
38 that the landfill gas heat input capacity is less than 3,000,000
39 British thermal units per hour pursuant to section 8 of this act and
40 the department's implementing rules adopted pursuant to section 2 of

1 this act and is insufficient to support the continuous operation of
2 an enclosed flare or other gas control device; and

3 (c) The owner or operator may temporarily operate an open flare
4 during the repair or maintenance of the gas control system, or while
5 awaiting the installation of an enclosed flare, or to address offsite
6 gas migration issues. Any owner or operator seeking to temporarily
7 operate an open flare must submit a written request to the department
8 or local authority pursuant to section 10 of this act and the
9 department's implementing rules adopted pursuant to section 2 of this
10 act.

11 (5) If the gas collection and control system does not use a
12 flare, it must either route the collected gas to an energy recovery
13 device or devices, or must route the collected gas to a treatment
14 system that processes the collected gas for subsequent sale or use.

15 (6) If a gas collection and control system routes the collected
16 gas to an energy recovery device or devices, the device or devices
17 must comply with the following requirements:

18 (a) The device or devices must achieve a methane leak rate of
19 three percent or less by weight; and

20 (b) If a boiler or a process heater is used as the gas control
21 device, the landfill gas stream must be introduced into the flame
22 zone, except that where the landfill gas is not the primary fuel for
23 the boiler or process heater, introduction of the landfill gas stream
24 into the flame zone is not required.

25 (7) If a gas collection and control system routes the collected
26 gas to a treatment system that processes the collected gas for
27 subsequent sale or use, the system must achieve a methane leak rate
28 of three percent or less by weight. Venting of processed landfill gas
29 to the ambient air is not allowed. If the processed landfill gas
30 cannot be routed for subsequent sale or use, then the treated
31 landfill gas must be controlled according to subsection (4) of this
32 section.

33 (8) The owner or operator of a municipal solid waste landfill
34 must conduct an annual source test for any gas control device or
35 devices subject to this section using the test methods identified in
36 section 8 of this act and the department's implementing rules adopted
37 pursuant to section 2 of this act. If a gas control device remains in
38 compliance after three consecutive annual source tests, then the
39 owner or operator may conduct the source test once every three years.
40 If a subsequent source test shows the gas collection and control

1 system is out of compliance, then the source testing frequency must
2 return to testing on an annual basis.

3 NEW SECTION. **Sec. 5.** (1) Except as provided in section 4 of
4 this act, beginning January 1st of the year following the year in
5 which the department adopts rules to implement this chapter, or upon
6 commencing operation of a newly installed gas collection and control
7 system or modification of an existing gas collection and control
8 system pursuant to section 4 of this act, whichever is later, no
9 location on a municipal solid waste landfill surface may exceed
10 either of the following methane concentration limits:

11 (a) Five hundred parts per million by volume, other than
12 nonrepeatable, momentary readings, as determined by instantaneous
13 surface emissions monitoring; and

14 (b) An average methane concentration limit of 25 parts per
15 million by volume as determined by integrated surface emissions
16 monitoring.

17 (2) The requirements of this section do not apply to:

18 (a) The working face of the landfill;

19 (b) Areas of the landfill surface where the landfill cover
20 material has been removed for the purpose of installing, expanding,
21 replacing, or repairing components of the landfill cover system, the
22 landfill gas collection and control system, the leachate collection
23 and removal system, or a landfill gas condensate collection and
24 removal system;

25 (c) Areas of the landfill surface where the landfill cover
26 material has been removed for law enforcement activities requiring
27 excavation; or

28 (d) Areas of the landfill in which the landfill owner or
29 operator, or a designee of the owner or operator, is engaged in
30 active mining for minerals or metals.

31 NEW SECTION. **Sec. 6.** (1) The owner or operator of a municipal
32 solid waste landfill with a gas collection and control system must
33 conduct instantaneous and integrated surface monitoring of the
34 landfill surface according to the requirements specified in
35 implementing rules adopted by the department pursuant to section 2 of
36 this act.

37 (2) The owner or operator of a municipal solid waste landfill
38 with a gas collection and control system must monitor the gas control

1 system according to the requirements specified in implementing rules
2 adopted by the department pursuant to section 2 of this act.

3 (3) The owner or operator of a municipal solid waste landfill
4 with a gas collection and control system must monitor each individual
5 wellhead to determine the gauge pressure according to the
6 requirements specified in implementing rules adopted by the
7 department pursuant to section 2 of this act.

8 NEW SECTION. **Sec. 7.** (1) The owner or operator of a municipal
9 solid waste landfill must maintain records and prepare reports as
10 prescribed in this section and in the department's implementing rules
11 adopted pursuant to section 2 of this act.

12 (2) The owner or operator of a municipal solid waste landfill
13 must maintain records related to monitoring, testing, landfill
14 operations, and the operation of the gas control device, gas
15 collection system, and gas control system. The records must be
16 provided by the owner or operator to the department or local
17 authority within five business days of a request from the department
18 or local authority.

19 (3) The owner or operator of a municipal solid waste landfill
20 that ceases to accept waste must submit a closure notification to the
21 department or local authority within 30 days of ceasing to accept
22 waste.

23 (4) The owner or operator of a municipal solid waste landfill
24 must submit a gas collection and control system equipment removal
25 report to the department or local authority 30 days prior to well
26 capping or the removal or cessation of operation of the gas
27 collection, treatment, or control system equipment.

28 (5) The owner or operator of a municipal solid waste landfill
29 with 450,000 or more tons of waste in place must prepare an annual
30 report for the period of January 1st through December 31st of each
31 year. The annual report must include a calculation of landfill gas
32 heat input capacity. Each annual report must be submitted to the
33 department and local authority during the subsequent calendar year,
34 with the date of submission to be established through rules adopted
35 by the department.

36 (6) The owner or operator of a municipal solid waste landfill
37 with fewer than 450,000 tons of waste in place must submit a waste in
38 place report to the department or local authority.

1 NEW SECTION. **Sec. 8.** (1) Any instrument used for the
2 measurement of methane must be a hydrocarbon detector or other
3 equivalent instrument approved by the department or local authority
4 based on standards adopted by the department that address
5 calibration, specifications, and performance criteria.

6 (2) The determination of landfill gas heat input capacity must be
7 calculated consistent with the department's implementing rules
8 adopted pursuant to section 2 of this act.

9 (3) The owner or operator of a municipal solid waste landfill
10 must measure the landfill surface concentration of methane using a
11 hydrocarbon detector meeting the requirements of this section and the
12 department's implementing rules adopted pursuant to section 2 of this
13 act.

14 (4) The owner or operator of a municipal solid waste landfill
15 must measure leaks using a hydrocarbon detector meeting the
16 requirements of this section and the department's implementing rules
17 adopted pursuant to section 2 of this act.

18 (5) The expected gas generation flow rate must be determined
19 according to the department's implementing rules adopted pursuant to
20 section 2 of this act.

21 (6) The control device destruction efficiency must be determined
22 according to the department's implementing rules adopted pursuant to
23 section 2 of this act.

24 (7) Gauge pressure must be determined using a hand-held
25 manometer, magnehelic gauge, or other pressure measuring device
26 approved by the department or local authority.

27 (8) Alternative test methods may be used if they are approved in
28 writing by the department or local authority.

29 NEW SECTION. **Sec. 9.** (1) The department or local authority must
30 allow the capping or removal of the gas collection and control system
31 at a closed municipal solid waste landfill, provided the following
32 three requirements are met:

33 (a) The gas collection and control system was in operation for at
34 least 15 years, unless the owner or operator demonstrates to the
35 satisfaction of the department or local authority that due to
36 declining methane rates, the municipal solid waste landfill will be
37 unable to operate the gas collection and control system for a 15 year
38 period;

1 (b) Surface methane concentration measurements do not exceed the
2 limits specified in section 5 of this act; and

3 (c) The owner or operator submits an equipment removal report to
4 the department or local authority pursuant to section 7 of this act
5 and the department's implementing rules adopted pursuant to section 2
6 of this act.

7 (2) Nothing in this section may be interpreted to modify or
8 supersede requirements related to the capping or removal of gas
9 collection and control systems that may exist under the state clean
10 air act, the federal clean air act, or rules adopted pursuant to
11 either the state clean air act or the federal clean air act.

12 NEW SECTION. **Sec. 10.** (1) The owner or operator of a municipal
13 solid waste landfill may request alternatives to the compliance
14 measures, monitoring requirements, and test methods and procedures
15 set forth in sections 4, 6, and 8 of this act, and the department's
16 implementing rules adopted pursuant to section 2 of this act. Any
17 alternatives requested by the owner or operator must be submitted in
18 writing to the department.

19 (2) The criteria that the department may use to evaluate
20 alternative compliance option requests include, but are not limited
21 to: Compliance history; documentation containing the landfill gas
22 flow rate and measured methane concentrations for individual gas
23 collection wells or components; permits; component testing and
24 surface monitoring results; gas collection and control system
25 operation, maintenance, and inspection records; and historical
26 meteorological data.

27 (3) The department must review the requested alternatives and
28 either approve or disapprove the alternatives within 120 days. The
29 department may request that additional information be submitted as
30 part of the review of the requested alternatives.

31 (4) If a request for an alternative compliance option is denied,
32 the department must provide written reasons for the denial.

33 (5) The department must deny a request for alternative compliance
34 measures if the request does not provide levels of enforceability or
35 methane emissions control that are equivalent to those set forth in
36 this chapter or in the department's implementing rules adopted
37 pursuant to section 2 of this act.

1 NEW SECTION. **Sec. 11.** The department or local authority may
2 request that any owner or operator of a municipal solid waste
3 landfill demonstrate that a landfill does not meet the applicability
4 criteria specified in section 2 of this act. Such a demonstration
5 must be submitted to the department or local authority within 90 days
6 of a written request received from the department or local authority.

7 NEW SECTION. **Sec. 12.** Any person who violates this chapter or
8 any rules that implement this chapter may incur a civil penalty
9 pursuant to RCW 70A.15.3160.

10 NEW SECTION. **Sec. 13.** The department and local authorities may
11 assess and collect such fees as may be necessary to recover the
12 direct and indirect costs associated with the implementation of this
13 chapter. Fees collected under this section must be deposited into the
14 air pollution control account created in RCW 70A.15.1010.

15 **Sec. 14.** RCW 70A.65.080 and 2021 c 316 s 10 are each amended to
16 read as follows:

17 (1) A person is a covered entity as of the beginning of the first
18 compliance period and all subsequent compliance periods if the person
19 reported emissions under RCW 70A.15.2200 for any calendar year from
20 2015 through 2019, or if additional data provided as required by this
21 chapter indicates that emissions for any calendar year from 2015
22 through 2019 equaled or exceeded any of the following thresholds, or
23 if the person is a first jurisdictional deliverer and imports
24 electricity into the state during the compliance period:

25 (a) Where the person owns or operates a facility and the
26 facility's emissions equal or exceed 25,000 metric tons of carbon
27 dioxide equivalent;

28 (b) Where the person is a first jurisdictional deliverer and
29 generates electricity in the state and emissions associated with this
30 generation equals or exceeds 25,000 metric tons of carbon dioxide
31 equivalent;

32 (c) Where the person is a first jurisdictional deliverer
33 importing electricity into the state and the cumulative annual total
34 of emissions associated with the imported electricity, whether from
35 specified or unspecified sources, exceeds 25,000 metric tons of
36 carbon dioxide equivalent. In consultation with any linked
37 jurisdiction to the program created by this chapter, by October 1,

1 2026, the department, in consultation with the department of commerce
2 and the utilities and transportation commission, shall adopt by rule
3 a methodology for addressing imported electricity associated with a
4 centralized electricity market;

5 (d) Where the person is a supplier of fossil fuel other than
6 natural gas and from that fuel 25,000 metric tons or more of carbon
7 dioxide equivalent emissions would result from the full combustion or
8 oxidation, excluding the amounts for fuel products that are produced
9 or imported with a documented final point of delivery outside of
10 Washington and combusted outside of Washington; and

11 (e)(i) Where the person supplies natural gas in amounts that
12 would result in exceeding 25,000 metric tons of carbon dioxide
13 equivalent emissions if fully combusted or oxidized, excluding the
14 amounts for fuel products that are produced or imported with a
15 documented final point of delivery outside of Washington and
16 combusted outside of Washington, and excluding the amounts: (A)
17 Supplied to covered entities under (a) through (d) of this
18 subsection; and (B) delivered to opt-in entities;

19 (ii) Where the person who is not a natural gas company and has a
20 tariff with a natural gas company to deliver to an end-use customer
21 in the state in amounts that would result in exceeding 25,000 metric
22 tons of carbon dioxide equivalent emissions if fully combusted or
23 oxidized, excluding the amounts: (A) Supplied to covered entities
24 under (a) through (d) of this subsection; and (B) the amounts
25 delivered to opt-in entities;

26 (iii) Where the person is an end-use customer in the state who
27 directly purchases natural gas from a person that is not a natural
28 gas company and has the natural gas delivered through an interstate
29 pipeline to a distribution system owned by the purchaser in amounts
30 that would result in exceeding 25,000 metric tons of carbon dioxide
31 equivalent emissions if fully combusted or oxidized, excluding the
32 amounts: (A) Supplied to covered entities under (a) through (d) of
33 this subsection; and (B) delivered to opt-in entities.

34 (2) A person is a covered entity as of the beginning of the
35 second compliance period and all subsequent compliance periods if the
36 person reported emissions under RCW 70A.15.2200 or provided emissions
37 data as required by this chapter for any calendar year from 2023
38 through 2025, where the person owns or operates a waste to energy
39 facility utilized by a county and city solid waste management program

1 and the facility's emissions equal or exceed 25,000 metric tons of
2 carbon dioxide equivalent.

3 (3) ~~((a))~~ A person is a covered entity beginning January 1,
4 2031, and all subsequent compliance periods if the person reported
5 emissions under RCW 70A.15.2200 or provided emissions data as
6 required by this chapter for any calendar year from 2027 through
7 2029, where the person owns or operates a ~~((~~

8 ~~(i) Landfill utilized by a county and city solid waste management
9 program and the facility's emissions equal or exceed 25,000 metric
10 tons of carbon dioxide equivalent; or~~

11 ~~(ii) Railroad)~~ railroad company, as that term is defined in RCW
12 81.04.010, and the railroad company's emissions equal or exceed
13 25,000 metric tons of carbon dioxide equivalent.

14 ~~((b) Subsection (a) of this subsection does not apply to owners
15 or operators of landfills that:~~

16 ~~(i) Capture at least 75 percent of the landfill gas generated by
17 the decomposition of waste using methods under 40 C.F.R. Part 98,
18 Subpart HH - Municipal Solid Waste landfills, and subsequent updates;
19 and~~

20 ~~(ii) Operate a program, individually or through partnership with
21 another entity, that results in the production of renewable natural
22 gas or electricity from landfill gas generated by the facility.~~

23 ~~(c) It is the intent of the legislature to adopt a greenhouse gas
24 reduction policy specific to landfills. If such a policy is not
25 enacted by January 1, 2030, the requirements of this subsection (3)
26 take full effect.)~~

27 (4) When a covered entity reports, during a compliance period,
28 emissions from a facility under RCW 70A.15.2200 that are below the
29 thresholds specified in subsection (1) or (2) of this section, the
30 covered entity continues to have a compliance obligation through the
31 current compliance period. When a covered entity reports emissions
32 below the threshold for each year during an entire compliance period,
33 or has ceased all processes at the facility requiring reporting under
34 RCW 70A.15.2200, the entity is no longer a covered entity as of the
35 beginning of the subsequent compliance period unless the department
36 provides notice at least 12 months before the end of the compliance
37 period that the facility's emissions were within 10 percent of the
38 threshold and that the person will continue to be designated as a
39 covered entity in order to ensure equity among all covered entities.
40 Whenever a covered entity ceases to be a covered entity, the

1 department shall notify the appropriate policy and fiscal committees
2 of the legislature of the name of the entity and the reason the
3 entity is no longer a covered entity.

4 (5) For types of emission sources described in subsection (1) of
5 this section that begin or modify operation after January 1, 2023,
6 and types of emission sources described in subsection (2) of this
7 section that begin or modify operation after 2027, coverage under the
8 program starts in the calendar year in which emissions from the
9 source exceed the applicable thresholds in subsection (1) or (2) of
10 this section, or upon formal notice from the department that the
11 source is expected to exceed the applicable emissions threshold,
12 whichever happens first. Sources meeting these conditions are
13 required to transfer their first allowances on the first transfer
14 deadline of the year following the year in which their emissions were
15 equal to or exceeded the emissions threshold.

16 (6) For emission sources described in subsection (1) of this
17 section that are in operation or otherwise active between 2015 and
18 2019 but were not required to report emissions for those years under
19 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
20 coverage under the program starts in the calendar year following the
21 year in which emissions from the source exceed the applicable
22 thresholds in subsection (1) of this section as reported pursuant to
23 RCW 70A.15.2200 or provided as required by this chapter, or upon
24 formal notice from the department that the source is expected to
25 exceed the applicable emissions threshold for the first year that
26 source is required to report emissions, whichever happens first.
27 Sources meeting these criteria are required to transfer their first
28 allowances on the first transfer deadline of the year following the
29 year in which their emissions, as reported under RCW 70A.15.2200 or
30 provided as required by this chapter, were equal to or exceeded the
31 emissions threshold.

32 (7) The following emissions are exempt from coverage in the
33 program, regardless of the emissions reported under RCW 70A.15.2200
34 or provided as required by this chapter:

35 (a) Emissions from the combustion of aviation fuels;

36 (b) Emissions from watercraft fuels supplied in Washington that
37 are combusted outside of Washington;

38 (c) Emissions from a coal-fired electric generation facility
39 exempted from additional greenhouse gas limitations, requirements, or
40 performance standards under RCW 80.80.110;

1 (d) Carbon dioxide emissions from the combustion of biomass or
2 biofuels;

3 (e) (i) Motor vehicle fuel or special fuel that is used
4 exclusively for agricultural purposes by a farm fuel user. This
5 exemption is available only if a buyer of motor vehicle fuel or
6 special fuel provides the seller with an exemption certificate in a
7 form and manner prescribed by the department. For the purposes of
8 this subsection, "agricultural purposes" and "farm fuel user" have
9 the same meanings as provided in RCW 82.08.865.

10 (ii) The department must determine a method for expanding the
11 exemption provided under (e) (i) of this subsection to include fuels
12 used for the purpose of transporting agricultural products on public
13 highways. The department must maintain this expanded exemption for a
14 period of five years, in order to provide the agricultural sector
15 with a feasible transition period; ~~((and))~~

16 (f) Emissions from facilities with North American industry
17 classification system code 92811 (national security); and

18 (g) Emissions from municipal solid waste landfills that are
19 subject to, and in compliance with, chapter 70A.--- RCW (the new
20 chapter created in section 17 of this act).

21 (8) The department shall not require multiple covered entities to
22 have a compliance obligation for the same emissions. The department
23 may by rule authorize refineries, fuel suppliers, facilities using
24 natural gas, and natural gas utilities to provide by agreement for
25 the assumption of the compliance obligation for fuel or natural gas
26 supplied and combusted in the state. The department must be notified
27 of such an agreement at least 12 months prior to the compliance
28 obligation period for which the agreement is applicable.

29 (9) (a) The legislature intends to promote a growing and
30 sustainable economy and to avoid leakage of emissions from
31 manufacturing to other locations. The legislature further intends to
32 see innovative new businesses locate and grow in Washington that
33 contribute to Washington's prosperity and environmental objectives.

34 (b) Consistent with the intent of the legislature to avoid the
35 leakage of emissions to other jurisdictions, in achieving the state's
36 greenhouse gas limits in RCW 70A.45.020, the state, including lead
37 agencies under chapter 43.21C RCW, shall pursue the limits in a
38 manner that recognizes that the siting and placement of new or
39 expanded best-in-class facilities with lower carbon emitting

1 processes is in the economic and environmental interests of the state
2 of Washington.

3 (c) In conducting a life-cycle analysis, if required, for new or
4 expanded facilities that require review under chapter 43.21C RCW, a
5 lead agency must evaluate and attribute any potential net cumulative
6 greenhouse gas emissions resulting from the project as compared to
7 other existing facilities or best available technology including
8 best-in-class facilities and emerging lower carbon processes that
9 supply the same product or end use. The department may adopt rules to
10 determine the appropriate threshold for applying this analysis.

11 (d) Covered emissions from an entity that is or will be a covered
12 entity under this chapter may not be the basis for denial of a permit
13 for a new or expanded facility. Covered emissions must be included in
14 the analysis undertaken pursuant to (c) of this subsection. Nothing
15 in this subsection requires a lead agency or a permitting agency to
16 approve or issue a permit to a permit applicant, including to a new
17 or expanded fossil fuel project.

18 (e) A lead agency under chapter 43.21C RCW or a permitting agency
19 shall allow a new or expanded facility that is a covered entity or
20 opt-in entity to satisfy a mitigation requirement for its covered
21 emissions under chapter 316, Laws of 2021 and under any greenhouse
22 gas emission mitigation requirements for covered emissions under
23 chapter 43.21C RCW by submitting to the department the number of
24 compliance instruments equivalent to its covered emissions during a
25 compliance period.

26 **Sec. 15.** RCW 70A.15.3160 and 2021 c 317 s 25, 2021 c 315 s 16,
27 and 2021 c 132 s 1 are each reenacted and amended to read as follows:

28 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
29 43.05.150, and in addition to or as an alternate to any other penalty
30 provided by law, any person who violates any of the provisions of
31 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~or 70A.60~~) 70A.535
32 (~~RCW~~), or 70A.--- RCW (the new chapter created in section 17 of
33 this act), RCW 76.04.205, or any of the rules in force under such
34 chapters or section may incur a civil penalty in an amount not to
35 exceed ten thousand dollars per day for each violation. Each such
36 violation shall be a separate and distinct offense, and in case of a
37 continuing violation, each day's continuance shall be a separate and
38 distinct violation. Enforcement actions related to violations of RCW
39 76.04.205 must be consistent with the provisions of RCW 76.04.205.

1 (b) Any person who fails to take action as specified by an order
2 issued pursuant to this chapter shall be liable for a civil penalty
3 of not more than ten thousand dollars for each day of continued
4 noncompliance.

5 (2)(a) Penalties incurred but not paid shall accrue interest,
6 beginning on the ninety-first day following the date that the penalty
7 becomes due and payable, at the highest rate allowed by RCW 19.52.020
8 on the date that the penalty becomes due and payable. If violations
9 or penalties are appealed, interest shall not begin to accrue until
10 the thirty-first day following final resolution of the appeal.

11 (b) The maximum penalty amounts established in this section may
12 be increased annually to account for inflation as determined by the
13 state office of the economic and revenue forecast council.

14 (3) Each act of commission or omission which procures, aids or
15 abets in the violation shall be considered a violation under the
16 provisions of this section and subject to the same penalty. The
17 penalties provided in this section shall be imposed pursuant to RCW
18 43.21B.300.

19 (4)(a) Except as provided in (b) of this subsection, all
20 penalties recovered under this section by the department or the
21 department of natural resources shall be paid into the state treasury
22 and credited to the air pollution control account established in RCW
23 70A.15.1010 or, if recovered by the authority, shall be paid into the
24 treasury of the authority and credited to its funds. If a prior
25 penalty for the same violation has been paid to a local authority,
26 the penalty imposed by the department under subsection (1) of this
27 section shall be reduced by the amount of the payment.

28 (b) All penalties recovered for violations of chapter 70A.60 RCW
29 must be paid into the state treasury and credited to the refrigerant
30 emission management account created in RCW 70A.60.050.

31 (5) To secure the penalty incurred under this section, the state
32 or the authority shall have a lien on any vessel used or operated in
33 violation of this chapter which shall be enforced as provided in RCW
34 60.36.050.

35 (6) Public or private entities that are recipients or potential
36 recipients of department grants, whether for air quality related
37 activities or not, may have such grants rescinded or withheld by the
38 department for failure to comply with provisions of this chapter.

39 (7) In addition to other penalties provided by this chapter,
40 persons knowingly underreporting emissions or other information used

1 to set fees, or persons required to pay emission or permit fees who
2 are more than ninety days late with such payments may be subject to a
3 penalty equal to three times the amount of the original fee owed.

4 (8) The department shall develop rules for excusing excess
5 emissions from enforcement action if such excess emissions are
6 unavoidable. The rules shall specify the criteria and procedures for
7 the department and local air authorities to determine whether a
8 period of excess emissions is excusable in accordance with the state
9 implementation plan.

10 **Sec. 16.** RCW 70A.15.1010 and 2021 c 315 s 13 are each amended to
11 read as follows:

12 (1) The air pollution control account is established in the state
13 treasury. All receipts collected by or on behalf of the department
14 from RCW 70A.15.2200(2), and receipts from nonpermit program sources
15 under RCW 70A.15.2210(1) and 70A.15.2230(7), and all receipts from
16 RCW 70A.15.5090 (~~and~~), 70A.15.5120, and section 13 of this act
17 shall be deposited into the account. Moneys in the account may be
18 spent only after appropriation. Expenditures from the account may be
19 used only to develop and implement the provisions of this chapter,
20 chapters 70A.25 and 70A.--- (the new chapter created in section 17 of
21 this act) RCW, and RCW 70A.60.060.

22 (2) The amounts collected and allocated in accordance with this
23 section shall be expended upon appropriation except as otherwise
24 provided in this section and in accordance with the following
25 limitations:

26 Portions of moneys received by the department of ecology from the
27 air pollution control account shall be distributed by the department
28 to local authorities based on:

29 (a) The level and extent of air quality problems within such
30 authority's jurisdiction;

31 (b) The costs associated with implementing air pollution
32 regulatory programs by such authority; and

33 (c) The amount of funding available to such authority from other
34 sources, whether state, federal, or local, that could be used to
35 implement such programs.

36 (3) The air operating permit account is created in the custody of
37 the state treasurer. All receipts collected by or on behalf of the
38 department from permit program sources under RCW 70A.15.2210(1),
39 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into

1 the account. Expenditures from the account may be used only for the
2 activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270,
3 and 70A.15.2230(7). Moneys in the account may be spent only after
4 appropriation.

5 NEW SECTION. **Sec. 17.** Sections 1 through 13 of this act
6 constitute a new chapter in Title 70A RCW.

7 NEW SECTION. **Sec. 18.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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