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**SUBSTITUTE HOUSE BILL 1682**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Fitzgibbon, Ramel, Duerr, Berry, Macri, Ormsby, and Hackney; by request of Department of Ecology)

AN ACT Relating to a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050; amending RCW 70A.65.110, 70A.65.230, and 70A.65.260; reenacting and amending RCW 43.21B.110; and prescribing penalties.

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

**Sec.**  RCW 70A.65.110 and 2021 c 316 s 13 are each amended to read as follows:

(1) Facilities owned or operated by a covered entity must receive an allocation of allowances for the covered emissions at those facilities under this subsection at no cost if the operations of the facility are classified as emissions-intensive and trade-exposed, as determined by being engaged in one or more of the processes described by the following industry descriptions and codes in the North American industry classification system, as those classifications existed on January 1, 2021:

(a) Metals manufacturing, including iron and steel making, ferroalloy and primary metals manufacturing, secondary aluminum smelting and alloying, aluminum sheet, plate, and foil manufacturing, and smelting, refining, and alloying of other nonferrous metals, North American industry classification system codes beginning with 331;

(b) Paper manufacturing, including pulp mills, paper mills, and paperboard milling, North American industry classification system codes beginning with 322;

(c) Aerospace product and parts manufacturing, North American industry classification system codes beginning with 3364;

(d) Wood products manufacturing, North American industry classification system codes beginning with 321;

(e) Nonmetallic mineral manufacturing, including glass container manufacturing, North American industry classification system codes beginning with 327;

(f) Chemical manufacturing, North American industry classification system codes beginning with 325;

(g) Computer and electronic product manufacturing, including semiconductor and related device manufacturing, North American industry classification system codes beginning with 334;

(h) Food manufacturing, North American industry classification system codes beginning with 311;

(i) Cement manufacturing, North American industry classification system code 327310;

(j) Petroleum refining, North American industry classification system code 324110;

(k) Asphalt paving mixtures and block manufacturing from refined petroleum, North American industry classification system code 324121;

(l) Asphalt shingle and coating manufacturing from refined petroleum, North American industry classification system code 324122; and

(m) All other petroleum and coal products manufacturing from refined petroleum, North American industry classification system code 324199.

(2) By July 1, 2022, the department must adopt by rule objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive, trade-exposed ((~~manufacturing businesses~~)) facilities during the second compliance period of the program and subsequent compliance periods. A manufacturing facility covered by subsection (1)(a) through (m) of this section is considered an emissions-intensive, trade-exposed facility and is eligible for allocation of no cost allowances as described in this section. In addition, any covered party that ((~~is a manufacturing business~~)) owns or operates a manufacturing facility that can demonstrate to the department that it meets the objective criteria adopted by rule is also eligible for treatment as emissions-intensive, trade-exposed and is eligible for allocation of no cost allowances as described in this section. In developing the objective criteria under this subsection, the department must consider the locations of facilities potentially identified as emissions-intensive, trade-exposed ((~~manufacturing businesses~~)) facilities relative to overburdened communities.

(3)(a) For the first compliance period beginning in January 1, 2023, the annual allocation of no cost allowances for direct distribution to a facility identified as emissions-intensive and trade-exposed must be equal to the facility's baseline carbon intensity established using data from 2015 through 2019, or other data as allowed under this section, multiplied by the facility's actual production for each calendar year during the compliance period. For facilities using the mass-based approach, the allocation of no cost allowances shall be equal to the facility's mass-based baseline using data from 2015 through 2019, or other data as allowed under this section.

(b) For the second compliance period, beginning in January, 2027, and in each subsequent compliance period, the annual allocation of no cost allowances established in (a) of this subsection shall be adjusted according to the benchmark reduction schedules established in (b)(ii) and (iii) and (e) of this subsection multiplied by the facility's actual production during the period. The department shall adjust the no cost allocation of allowances and credits to an emissions-intensive and trade-exposed facility to avoid duplication with any no cost allowances transferred pursuant to RCW 70A.65.120 and 70A.65.130, if applicable.

(i) For the purpose of this section, "carbon intensity" means the amount of carbon dioxide equivalent emissions from a facility in metric tons divided by the facility specific measure of production including, but not limited to, units of product manufactured or sold, over the same time interval.

(ii) If an emissions-intensive and trade-exposed facility is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances, the entity may elect to use a mass-based baseline that does not vary based on changes in production volumes. The mass-based baseline must be based upon data from 2015 through 2019, unless the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015. For each year during the first four-year compliance period that begins January 1, 2023, these facilities must be awarded no cost allowances equal to 100 percent of the facility's mass-based baseline. For each year during the second four-year compliance period that begins January 1, 2027, these facilities must be awarded no cost allowances equal to 97 percent of the facility's mass-based baseline. For each year during the third compliance period that begins January 1, 2031, these facilities must be awarded no cost allowances equal to 94 percent of the facility's mass-based baseline. For the year beginning January 1, 2035, these facilities must be awarded no cost allowances equal to 88 percent of the facility's mass-based baseline. For each year beginning January 1, 2036, until January 1, 2050, these facilities must be awarded no cost allowances that must be six percentage points below the percentage of no cost allowances awarded during the preceding year. Except as provided in (b)(iii) of this subsection, if a facility elects to use a mass-based baseline, it may not later convert to a carbon intensity benchmark during the first three compliance periods.

(iii) A facility with a North American industry classification system code beginning with 3364 that is utilizing a mass-based baseline in (b)(ii) of this subsection must receive an additional no cost allowance allocation under this section in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities utilizing a carbon intensity benchmark pursuant to this subsection (3)(b). The department shall establish methods to award, for any annual period, additional no cost allowance allocations under this section and, if appropriate based on projected production, to achieve a similar ongoing result through the adjustment of the facility's mass-based baseline. An eligible facility under this subsection that has elected to use a mass-based baseline may not convert to a carbon intensity benchmark until the next compliance period.

(c)(i) By September 15, 2022, each emissions-intensive, trade-exposed facility shall submit its carbon intensity baseline for the first compliance period to the department. The carbon intensity baseline for the first compliance period must use data from 2015-2019, unless the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015.

(ii) By November 15, 2022, the department shall review and approve each emissions-intensive, trade-exposed facility's baseline carbon intensity for the first compliance period.

(d) During the first four-year compliance period that begins January 1, 2023, each emissions-intensive, trade-exposed facility must record its facility-specific carbon intensity baseline based on its actual production.

(e)(i) For the second four-year compliance period that begins January 1, 2027, the second period benchmark for each emissions-intensive, trade-exposed facility is three percent below the first period baseline specified in (a), (b), and (c) of this subsection.

(ii) For the third four-year compliance period that begins January 1, 2031, the third period benchmark for each emissions-intensive, trade-exposed facility is three percent lower than the second period benchmark.

(iii) For the year beginning January 1, 2035, the benchmark for each emissions-intensive, trade-exposed facility is 88 percent of the facility's carbon intensity baseline. For each year beginning January 1, 2036, until January 1, 2050, the benchmark for each emissions-intensive, trade-exposed facility is six percentage points below the percentage of no cost allowances awarded during the preceding year.

(f) ((~~Prior to the beginning of either the second, third, or subsequent compliance periods, the department may make an upward adjustment in the next compliance period's benchmark for an emissions-intensive, trade-exposed facility based on the facility's demonstration to the department that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. The department may base the upward adjustment applicable to an emissions-intensive, trade-exposed facility in the next compliance period on the facility's best available technology analysis.~~)) (i) The department shall by rule provide for an emissions-intensive, trade-exposed ((~~facilities~~)) facility to apply, prior to the beginning of the fourth or subsequent compliance periods, to the department for an upwards adjustment to the allocation for direct distribution of no cost allowances ((~~based on its facility-specific carbon intensity benchmark or mass emissions baseline. The department shall make adjustments based on:~~

~~(i) A significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods in this state by an emissions-intensive, trade-exposed facility based on a finding by the department that an adjustment is necessary to accommodate for changes in the manufacturing process that have a material impact on emissions;~~

~~(ii) Significant changes to an emissions-intensive, trade-exposed facility's external competitive environment that result in a significant increase in leakage risk; or~~

~~(iii) Abnormal operating periods when an emissions-intensive, trade-exposed facility's carbon intensity has been materially affected so that these abnormal operating periods are either excluded or otherwise considered in the establishment of the compliance period carbon intensity benchmarks~~)) to the facility.

(ii)(A) If the facility claims that it is already employing best available technology, the application must provide a detailed description of the technology and all data and information that may be relevant to the department's determination as to whether the facility is employing best available technology. The department may require an applicant to submit data or other information as necessary to allow the department to determine what constitutes best available technology for the applicant. The department may request or consider data and information regarding best available technology sourced from a person other than an applicant. The department must deny an application for which it does not have sufficient data or information to allow it to determine what constitutes best available technology.

(B) If the facility is not already employing best available technology, the application must set forth a detailed and credible plan to employ best available technology within a reasonable period of time, but not to exceed 12 years. The plan must include a description of each technology, component, process, improvement, equipment, or other action or investment that will result in reductions in the facility's carbon intensity or mass-based emissions, and the year of deployment and the emissions reductions anticipated from each such action or investment; a description of how the best available technology will be designed, installed, and operated; and a description of how the best available technology will be financed, which may include a proposed cost share with the state using funds made available from the climate commitment account or the dedication of any revenues generated from allowances allocated to the owner or operator of the facility under this section. The plan must also include an estimate of, and all relevant data and information concerning, what the facility's carbon intensity or mass-based baseline will be once the facility is employing best available technology and for each year prior to the completion of the plan to employ best available technology. The department may require an applicant to submit data or other information as necessary to allow the department to determine what constitutes best available technology for the applicant. The department may request or consider data and information regarding best available technology sourced from a person other than an applicant. The department must deny an application for which it does not have sufficient data or information to allow it to determine what constitutes best available technology.

(iii) The department must grant the application if the department determines, based upon a review of the data and information submitted by the facility and any other relevant data and information, that:

(A) The facility is already employing best available technology; or

(B) The facility is not employing best available technology but has a detailed and credible plan to employ best available technology within a reasonable period of time, but not to exceed 12 years, in a manner that will result in additional reductions in carbon intensity or mass-based emissions. The department and facility may agree to additional terms or conditions that may be incorporated into the facility's plan.

(iv)(A) Except as provided in (f)(iv)(C) of this subsection, if the department grants an application to a facility that already employs best available technology, it must award no cost allowances equal to 100 percent of the facility's carbon intensity or mass-based baseline for each year of the compliance period their application concerned.

(B) Except as provided in (f)(iv)(C) of this subsection, if the department grants an application to a facility that is not employing best available technology, the department must award no cost allowances equal to 100 percent of the facility's emissions as projected under the best available technology plan for each year of the compliance period their application concerned.

(C) Notwithstanding (f)(iv)(A) and (B) of this subsection, allowances awarded pursuant to (f)(iv)(A) and (B) of this subsection must not exceed the quantity of free allowances the facility otherwise received, or otherwise would have received, for the year beginning January 1, 2035.

(v) A facility's application seeking an upwards adjustment in the allocation of no cost allowances, and any determination by the department, is only valid for the compliance period it was submitted concerning. A facility that has received an upwards adjustment in the allocation of no cost allowances must reapply for an upwards adjustment prior to the beginning of any subsequent compliance period but may rely on a previously approved application as the basis of their best available technology application to the department for any components of best available technology or the best available technology plan that have not changed since the plan was last approved by the department.

(vi) A facility that has received an upwards adjustment in the allocation of no cost allowances based upon a detailed and credible plan to employ best available technology, but has failed to employ best available technology consistent with the deployment schedule required in the plan:

(A) Is subject to enforcement and penalties under RCW 70A.65.200(2) for a failure to submit sufficient compliance instruments for every additional allowance that it received pursuant to the upwards adjustment; and

(B) May not apply for, or receive, any upwards adjustment in the allocation of no cost allowances in any subsequent compliance period.

(vii) Pursuant to RCW 43.21B.110(1)(o), a person may appeal a decision by the department to approve or not approve an upwards adjustment in the allocation of no cost allowances under this subsection.

(g) Any adjustment granted pursuant to (f) of this subsection may not:

(i) Increase the annual allowance budget for the program under RCW 70A.65.070 for any calendar year in the compliance period for which the adjustment was granted or for any future calendar year;

(ii) Reduce the progressively equivalent reductions year over year in the annual allowance budgets under RCW 70A.65.070; or

(iii) Prevent the achievement of the emissions limits established in RCW 70A.45.020, as those limits apply to this chapter.

(4)((~~(a) By December 1, 2026, the department shall provide a report to the appropriate committees of the senate and house of representatives that describes alternative methods for determining the amount and a schedule of allowances to be provided to facilities owned or operated by each covered entity designated as an emissions-intensive, trade-exposed facility from January 1, 2035, through January 1, 2050. The report must include a review of global best practices in ensuring against emissions leakage and economic harm to businesses in carbon pricing programs and describe alternative methods of emissions performance benchmarking and mass-based allocation of no cost allowances. At a minimum, the department must evaluate benchmarks based on both carbon intensity and mass, as well as the use of best available technology as a method for compliance. In developing the report, the department shall form an advisory group that includes representatives of the manufacturers listed in subsection (1) of this section.~~

~~(b) If the legislature does not adopt a compliance obligation for emissions-intensive, trade-exposed facilities by December 1, 2027, those facilities must continue to receive allowances as provided in the third four-year compliance period that begins January 1, 2031.~~

~~(5)~~)) If the actual emissions of an emissions-intensive, trade- exposed facility exceed the facility's no cost allowances assigned for that compliance period, it must acquire additional compliance instruments such that the total compliance instruments transferred to its compliance account consistent with chapter 316, Laws of 2021 equals emissions during the compliance period. An emissions-intensive, trade-exposed facility must be allowed to bank unused allowances, including for future sale and investment in best available technology when economically feasible. The department shall limit the use of offset credits for compliance by an emissions-intensive, trade-exposed facility, such that the quantity of no cost allowances plus the provision of offset credits does not exceed 100 percent of the facility's total compliance obligation over a compliance period.

((~~(6)~~)) (5) The department must withhold or withdraw the relevant share of allowances allocated to a covered entity under this section in the event that the covered entity ceases production in the state and becomes a closed facility. In the event an entity curtails all production and becomes a curtailed facility, the allowances are retained but cannot be traded, sold, or transferred and are still subject to the emission reduction requirements specified in this section. An owner or operator of a curtailed facility may transfer the allowances to a new operator of the facility that will be operated under the same North American industry classification system codes. If the curtailed facility becomes a closed facility, then all unused allowances will be transferred to the emissions containment reserve. A curtailed facility is not eligible to receive free allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

((~~(7)~~)) (6) An owner or operator of more than one facility receiving no cost allowances under this section may transfer allowances among the eligible facilities.

((~~(8)~~)) (7) Rules adopted by the department under this section must include protocols for allocating allowances at no cost to an eligible facility built after July 25, 2021. The protocols must include consideration of the products and criteria pollutants being produced by the facility, as well as the local environmental and health impacts associated with the facility. For a facility that is built on tribal lands or is determined by the department to impact tribal lands and resources, the protocols must be developed in consultation with the affected tribal nations.

(8) If deemed by the department necessary to ensure proper market functioning, to achieve the share of the statewide emissions limits established in RCW 70A.45.020 and covered by this act, or to provide for alignment with other jurisdictions to which the state has executed a linkage agreement, the department by rule may modify the no cost allowance amounts in:

(a) Subsection (3)(b)(ii) of this section concerning each year beginning January 1, 2035, until January 1, 2050; and

(b) Subsection (3)(e)(iii) of this section; and

(c) Subsection (3)(f) of this section.

**Sec.**  RCW 70A.65.230 and 2021 c 316 s 26 are each amended to read as follows:

(1) It is the intent of the legislature that each year the total investments made through the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, and the air quality and health disparities improvement account created in RCW 70A.65.280, achieve the following:

(a) A minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified under chapter 314, Laws of 2021; and

(b) In addition to the requirements of (a) of this subsection, a minimum of not less than 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe. An investment that meets the requirements of both this subsection (1)(b) and (a) of this subsection may count toward the minimum percentage targets for both subsections.

(2) The expenditure of moneys under this chapter must be consistent with applicable federal, state, and local laws, and treaty rights including, but not limited to, prohibitions on uses of funds imposed by the state Constitution.

(3) For the purposes of this section, "benefits" means investments or activities that:

(a) Reduce vulnerable population characteristics, environmental burdens, or associated risks that contribute significantly to the cumulative impact designation of highly impacted communities;

(b) Meaningfully protect an overburdened community from, or support community response to, the impacts of air pollution or climate change; or

(c) Meet a community need identified by vulnerable members of the community that is consistent with the intent of this chapter.

(4) The state must develop a process by which to evaluate the impacts of the investments made under this chapter, work across state agencies to develop and track priorities across the different eligible funding categories, and work with the environmental justice council pursuant to RCW 70A.65.040.

((~~(5) No expenditures may be made from the carbon emissions reduction account created in RCW 70A.65.240, the climate investment account created in RCW 70A.65.250, or the air quality and health disparities improvement account created in RCW 70A.65.280 if, by April 1, 2023, the legislature has not considered and enacted request legislation brought forth by the department under RCW 70A.65.060 that outlines a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.~~))

**Sec.**  RCW 70A.65.260 and 2021 c 316 s 29 are each amended to read as follows:

(1) The climate commitment account is created in the state treasury. The account must receive moneys distributed to the account from the climate investment account created in RCW 70A.65.250. Moneys in the account may be spent only after appropriation. Projects, activities, and programs eligible for funding from the account must be physically located in Washington state and include, but are not limited to, the following:

(a) Implementing the working families tax rebate in RCW 82.08.0206;

(b) Supplementing the growth management planning and environmental review fund established in RCW 36.70A.490 for the purpose of making grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and 36.70A.600, for costs associated with RCW 36.70A.610, and to cover costs associated with the adoption of optional elements of comprehensive plans consistent with RCW 43.21C.420;

(c) Programs, activities, or projects that reduce and mitigate impacts from greenhouse gases and copollutants in overburdened communities, including strengthening the air quality monitoring network to measure, track, and better understand air pollution levels and trends and to inform the analysis, monitoring, and pollution reduction measures required in RCW 70A.65.020;

(d) Programs, activities, or projects that deploy renewable energy resources, such as solar and wind power, and projects to deploy distributed generation, energy storage, demand-side technologies and strategies, and other grid modernization projects;

(e) Programs, activities, or projects that increase the energy efficiency or reduce greenhouse gas emissions of industrial facilities including, but not limited to, proposals to implement combined heat and power, district energy, or on-site renewables, such as solar and wind power, to upgrade the energy efficiency of existing equipment, to reduce process emissions, and to switch to less emissions-intensive fuel sources, including programs, activities, or projects that reduce covered emissions of facilities identified as emissions-intensive, trade-exposed industries pursuant to RCW 70A.65.110;

(f) Programs, activities, or projects that achieve energy efficiency or emissions reductions in the agricultural sector including:

(i) Fertilizer management;

(ii) Soil management;

(iii) Bioenergy;

(iv) Biofuels;

(v) Grants, rebates, and other financial incentives for agricultural harvesting equipment, heavy-duty trucks, agricultural pump engines, tractors, and other equipment used in agricultural operations;

(vi) Grants, loans, or any financial incentives to food processors to implement projects that reduce greenhouse gas emissions;

(vii) Renewable energy projects;

(viii) Farmworker housing weatherization programs;

(ix) Dairy digester research and development;

(x) Alternative manure management; and

(xi) Eligible fund uses under RCW 89.08.615;

(g) Programs, activities, or projects that increase energy efficiency in new and existing buildings, or that promote low carbon architecture, including use of newly emerging alternative building materials that result in a lower carbon footprint in the built environment over the life cycle of the building and component building materials;

(h) Programs, activities, or projects that promote the electrification and decarbonization of new and existing buildings, including residential, commercial, and industrial buildings;

(i) Programs, activities, or projects that improve energy efficiency, including district energy, and investments in market transformation of high efficiency electric appliances and equipment for space and water heating;

(j) Clean energy transition and assistance programs, activities, or projects that assist affected workers or people with lower incomes during the transition to a clean energy economy, or grow and expand clean manufacturing capacity in communities across Washington state including, but not limited to:

(i) Programs, activities, or projects that directly improve energy affordability and reduce the energy burden of people with lower incomes, as well as the higher transportation fuel burden of rural residents, such as bill assistance, energy efficiency, and weatherization programs;

(ii) Community renewable energy projects that allow qualifying participants to own or receive the benefits of those projects at reduced or no cost;

(iii) Programs, activities, or other worker-support projects for bargaining unit and nonsupervisory fossil fuel workers who are affected by the transition away from fossil fuels to a clean energy economy. Worker support may include, but is not limited to: (A) Full wage replacement, health benefits, and pension contributions for every worker within five years of retirement; (B) full wage replacement, health benefits, and pension contributions for every worker with at least one year of service for each year of service up to five years of service; (C) wage insurance for up to five years for workers reemployed who have more than five years of service; (D) up to two years of retraining costs, including tuition and related costs, based on in-state community and technical college costs; (E) peer counseling services during transition; (F) employment placement services, prioritizing employment in the clean energy sector; and (G) relocation expenses;

(iv) Direct investment in workforce development, via technical education, community college, institutions of higher education, apprenticeships, and other programs including, but not limited to:

(A) Initiatives to develop a forest health workforce established under RCW 76.04.521; and

(B) Initiatives to develop new education programs, emerging fields, or jobs pertaining to the clean energy economy;

(v) Transportation, municipal service delivery, and technology investments that increase a community's capacity for clean manufacturing, with an emphasis on communities in greatest need of job creation and economic development and potential for commute reduction;

(k) Programs, activities, or projects that reduce emissions from landfills and waste-to-energy facilities through diversion of organic materials, methane capture or conversion strategies, or other means;

(l) Carbon dioxide removal projects, programs, and activities; and

(m) Activities to support efforts to mitigate and adapt to the effects of climate change affecting Indian tribes, including capital investments in support of the relocation of Indian tribes located in areas at heightened risk due to anticipated sea level rise, flooding, or other disturbances caused by climate change. The legislature intends to dedicate at least $50,000,000 per biennium from the account for purposes of this subsection.

(2) Moneys in the account may not be used for projects or activities that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from this account must result in long-term environmental benefits and increased resilience to the impacts of climate change.

**Sec.**  RCW 43.21B.110 and 2021 c 316 s 41 and 2021 c 313 s 16 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Decisions of the department of ecology to approve or not approve an upwards adjustment to the allocation of no cost allowances to an emissions-intensive, trade-exposed facility under RCW 70A.65.110(3)(f).

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**--- END ---**