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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5022**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Das, Rolfes, Carlyle, Dhingra, Keiser, Kuderer, Liias, Lovelett, Nobles, Nguyen, Pedersen, Saldaña, Salomon, Stanford, Wellman, and Wilson, C.)

AN ACT Relating to managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and addressing plastic packaging; amending RCW 43.21B.300 and 70A.220.020; reenacting and amending RCW 43.21B.110; adding a new section to chapter 39.26 RCW; adding a new chapter to Title 70A RCW; creating new sections; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec.**  FINDINGS—INTENT. (1) The legislature finds that minimum recycled content requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers, bans on problematic and unnecessary plastic packaging, and standards for customer opt-in for food service packaging and accessories are among actions needed to improve the state's recycling system as well as reduce litter.

(2) By implementing a minimum recycled content requirement for plastic beverage containers, trash bags, and household cleaning and personal care product containers; prohibiting the sale and distribution of certain expanded polystyrene products; and establishing optional serviceware requirements as provided for in this chapter; the legislature intends to take another step towards ensuring plastic packaging and other packaging materials are reduced, recycled, and reused.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beverage" means beverages identified in (a) through (f) of this subsection, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine;

(d) Distilled spirits;

(e) Mineral water, soda water, and similar carbonated soft drinks; and

(f) Any beverage other than those specified in this subsection, except infant formula or medical food as defined in 21 U.S.C. Sec. 360ee(b)(3).

(2) "Beverage manufacturer" means a manufacturer of one or more beverages described in subsection (1) of this section, that are sold, offered for sale, or distributed in a plastic beverage container in Washington.

(3) "Beverage manufacturing industry" means an association that represents companies that manufacture beverages.

(4) "Condiment packaging" means packaging used to deliver single-serving condiments to customers. Condiment packaging includes, but is not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly and jam, and soy sauce.

(5) "Dairy milk" means a beverage that designates milk as the predominant (first) ingredient in the ingredient list on the container's label.

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

(7) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(8) "Food service business" means a business selling or providing food for consumption on or off the premises, and includes full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, home delivery services, delivery services provided through an online application, and business or institutional cafeterias.

(9) "Food service product" means a product including, but not limited to, containers, plates, bowls, cups, lids, beverage containers, meat trays, deli rounds, utensils, sachets, straws, condiment packaging, clamshells and other hinged or lidded containers, wrap, portion cups, and other food service products that are intended for one-time use and used for food or drink offered for sale or use.

(10) "Household cleaning and personal care product" means products identified in (a) through (f) of this subsection:

(a) Laundry detergents, softeners, and stain removers;

(b) Household cleaning products;

(c) Liquid soap;

(d) Shampoo, conditioner, styling sprays and gels, and other hair care products;

(e) Lotion, moisturizer, facial toner, and other skin care products; or

(f) Oral hygiene products.

(11) "Household cleaning and personal care product manufacturing industry" means an association that represents companies that manufacture household cleaning and personal care products.

(12) "Plastic beverage container" means a bottle or other rigid container that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins and containing a beverage. Plastic beverage container does not include:

(a) Refillable beverage containers (i.e., containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse);

(b) Rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, and nonprescription and prescription drugs, dietary supplements as defined in RCW 82.08.0293, and packaging used for those products;

(c) Bladders or pouches that contain wine; or

(d) Liners, caps, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container.

(13) "Plastic household cleaning and personal care product container" means a bottle, jug, or other rigid container with a neck or mouth narrower than the base, a minimum capacity of eight fluid ounces or its equivalent volume, a maximum capacity of five fluid gallons or its equivalent volume that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins, and containing a household cleaning or personal care product. "Plastic household cleaning and personal care product container" does not include:

(a) Refillable household cleaning and personal care product containers (i.e., containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse); and

(b) Rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, and nonprescription and prescription drugs, dietary supplements as defined in RCW 82.08.0293, and packaging used for those products.

(14) "Plastic trash bag" means a bag that is made of noncompostable plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded or recycled, and includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag. "Plastic trash bag" does not include any compostable bags meeting the requirements of chapter 70A.455 RCW.

(15) "Plastic trash bag manufacturing industry" means an association that represents companies that manufacture plastic trash bags.

(16) "Postconsumer recycled content" means the content of a product or packaging made of recycled materials derived specifically from recycled material generated by households or by commercial, industrial, and institutional facilities in their role as end users of the product that can no longer be used for its intended purpose. This includes returns of material from the distribution chain.

(17)(a) "Producer of household cleaning and personal care product containers" means a manufacturer or entity that uses containers that are sold, offered for sale, or distributed at a physical retail location or remote sale in this state, in the following hierarchy:

(i) A manufacturer or entity who uses a container and sells, offers for sale, or distributes a product in a container under their own brand;

(ii) If the container is used by a person other than the brand owner, the producer of the container is the person who is the owner or licensee of a brand or trademark under which a container is sold, offered for sale, or distributed in or into this state;

(iii) If there is no person described in (a)(i) and (ii) of this subsection within the United States, the producer of the container is the person who imports the container into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the container in this state; or

(iv) The manufacturer or entity under (a)(i) of this subsection who uses a container, under their own brand, may notify the department of another manufacturer or third-party entity that has agreed to fulfill the duties of a producer for designated containers used under this chapter. The notification must be submitted jointly with the manufacturer or third-party entity. In the event that the brand no longer maintains a contract with the manufacturer or entity, the original producer in (a)(i) of this subsection must notify the state within 30 days that the product container has been removed from the market and is no longer reportable for that brand.

(b) A "producer of household cleaning and personal care product containers" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers that annually sell, offer for sale, distribute, or import into the country for sale in Washington:

(A) Less than one ton of household cleaning and personal care product containers each year; or

(B) Household cleaning and personal care products that in aggregate generate less than $1,000,000 in revenue each year.

(18)(a) "Producer of plastic trash bags that are sold, offered for sale, or distributed at physical retail location or remote sale in this state" means, in the following hierarchy:

(i) A manufacturer or entity who sells, offers for sale, or distributes plastic trash bags under their own brand;

(ii) The person who is the owner or licensee of a brand or trademark under which the plastic trash bags are sold, offered for sale, or distributed in or into this state;

(iii) If there is no person described in (a)(i) and (ii) of this subsection within the United States, the producer of the plastic trash bags is the person who imports the plastic trash bags into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the plastic trash bags in this state; or

(iv) The manufacturer or entity under (a)(i) of this subsection who sells, offers for sale, or distributes plastic trash bags under their own brand, may notify the department of another manufacturer or third-party entity that has agreed to fulfill the duties of a producer under this chapter. The notification must be submitted jointly with the manufacturer or third-party entity. In the event that the brand no longer maintains a contract with the manufacturer or entity, the original producer in (a)(i) of this subsection must notify the state within 30 days that the product has been removed from the market and is no longer reportable for that brand.

(b) A "producer of plastic trash bags" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers that annually sell, offer for sale, distribute, or import into the country for sale in Washington:

(A) Less than one ton of plastic trash bags each year; or

(B) Plastic trash bags that in aggregate generate less than $1,000,000 each year in revenue.

(19)(a) "Retail establishment" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.

(b) "Retail establishment" includes, but is not limited to, food service businesses, grocery stores, department stores, hardware stores, home delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.

(20)(a) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers.

(b) "Utensil" does not include plates, bowls, cups, and other products used to contain food or beverages.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN PLASTIC BEVERAGE CONTAINERS. (1) Beginning January 1, 2023, beverage manufacturers that offer for sale, sell, or distribute in Washington beverages in plastic beverage containers must meet minimum postconsumer recycled content as required under subsection (3) of this section.

(2)(a) On or before April 1, 2022, and annually thereafter, beverage manufacturers that offer for sale, sell, or distribute in Washington beverages in plastic beverage containers must register with the department individually or through a third-party representative registering on behalf of a group of beverage manufacturers.

(b) After January 1, 2023, a beverage manufacturer that offers for sale, sells, or distributes in Washington beverages in plastic beverage containers not registered with the department either individually or through a third party may not sell or supply beverage containers in or into Washington state.

(c) Registration information must include a list of the beverage manufacturers and the brand names of the beverages represented in the registration submittal. Beginning April 1, 2024, registration information may accompany the annual reporting required under section 4 of this act.

(d)(i) By January 31, 2022, and every January 31st thereafter, the department must identify the annual costs it will incur to implement this section and sections 4 and 5 of this act in the next fiscal year, including rule making, and invoices of costs for beverage manufacturers or their third-party representatives. The department must determine an annual payment by beverage manufacturers or their third-party representative that is adequate to cover, but not exceed, the department's full costs to implement, administer, and enforce this chapter in the next fiscal year, including rule making. The department must equitably determine payment amounts for an individual beverage manufacturer and third-party representatives.

(ii) The department must:

(A) Apply any remaining annual payment funds from the current year to the annual payment for the coming year, if the collected annual payment exceeds the department's costs for a given year; and

(B) Increase annual payments for the coming year to cover the department's costs, if the collected annual payment was less than the department's costs for a given year.

(e) By April 1, 2022, and every April 1st thereafter, beverage manufacturers or their third-party representative must submit a payment as determined by the department under (d) of this subsection.

(3)(a) A beverage manufacturer that sells, offers for sale, or distributes plastic beverage containers in or into Washington must meet the following annual minimum postconsumer recycled content percentage for the total quantity of plastic beverage containers, by weight, that are sold, offered for sale, or distributed in Washington effective for beverages except dairy milk:

(i) January 1, 2023, through December 31, 2025: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2026, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(b) For dairy milk:

(i) January 1, 2028, through December 31, 2030: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2031, through December 31, 2035: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2036: No less than 50 percent postconsumer recycled content plastic by weight.

(4)(a) Beginning January 1, 2025, the department may, on an annual basis, review and determine whether to adjust the minimum postconsumer recycled content percentage required pursuant to subsection (3) of this section. The department's review may be initiated by the department or at the petition of the beverage manufacturing industry not more than once annually. The department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages required pursuant to subsection (3) of this section. In making a determination pursuant to this subsection, the department must consider, at a minimum, all of the following factors:

(i) Changes in market conditions, including supply and demand for postconsumer recycled content plastics, collection rates, and bale availability both domestically and globally;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (3) of this section, including the availability of high quality recycled plastic, and food-grade recycled plastic from beverage container recycling programs;

(iv) The capacity of recycling or processing infrastructure; and

(v) The progress made by beverage manufacturers in achieving the goals of this section.

(b) The beverage manufacturing industry or a beverage manufacturer may appeal the department's decision under (a) of this subsection to the pollution control hearings board within 30 days of the department's determination.

(5) A beverage manufacturer that does not achieve the postconsumer recycled content requirements established under this section is subject to a penalty established in section 5 of this act.

(6) A city, town, county, or municipal corporation may not implement local recycled content requirements for plastic beverage containers that are subject to minimum postconsumer recycled content as required under this section.

(7) The department may enter into a contract for the services required to implement this chapter and related duties of the department.

NEW SECTION. **Sec.**  BEVERAGE MANUFACTURER REPORTING REQUIREMENTS. (1)(a) Beginning April 1, 2024, beverage manufacturers, individually or through a third party representing a group of manufacturers, must provide an annual report to the department that includes the amount of virgin plastic and the amount of postconsumer recycled content by resin type used for plastic beverage containers for beverages manufactured by the beverage manufacturer that are sold, offered for sale, or distributed into Washington state, including the total postconsumer recycled content resins as a percentage of total weight. The report must be submitted in a format and manner prescribed by the department. A manufacturer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the manufacturer demonstrates to the department that state level data is not available or feasible to generate.

(b) The department must post the information reported under this subsection on its website.

(2) A beverage manufacturer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  PENALTIES FOR PLASTIC BEVERAGE CONTAINERS. (1)(a) Beginning January 1, 2023, a beverage manufacturer that does not meet the minimum postconsumer recycled content requirements pursuant to section 3 of this act is subject to a penalty pursuant to this section. Beginning March 1, 2024, the penalty must be collected annually, if a penalty reduction has not been approved pursuant to subsection (3) of this section and calculated in accordance with subsection (2) of this section.

(b) A beverage manufacturer that is assessed a penalty pursuant to this section may pay the penalty to the department in quarterly installments or arrange an alternative payment schedule subject to the approval of the department, not to exceed a 12-month payment plan unless an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(2) Beginning June 1, 2024, and annually thereafter, the department shall invoice any assessed penalty for the previous calendar year based on the postconsumer recycled content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amounts in pounds in the aggregate of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the beverage manufacturer to produce beverage containers sold or offered for sale in the state, in accordance with the following:

(a)(i) The annual penalty amount assessed to a beverage manufacturer must equal the product of both of the following: The total pounds of plastic used multiplied by the relevant minimum postconsumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of postconsumer recycled plastic used; multiplied by 20 cents.

(ii) Example: [(Total pounds of plastic used x minimum postconsumer recycled plastic target percentage) – (Total pounds of plastic used x postconsumer recycled plastic percentage used)] x 20 cents.

(b) For the purposes of (a) of this subsection, both of the following apply:

(i) The total pounds of plastic used must equal the sum of the amount of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the beverage manufacturer, as reported pursuant to section 4 of this act.

(ii) If the product calculated pursuant to (a) of this subsection is equal to or less than zero, a penalty may not be assessed.

(3)(a)(i) The department shall consider granting a reduction of penalties assessed pursuant to this section for the purpose of meeting the minimum postconsumer recycled content requirements required pursuant to section 3 of this act.

(ii) In determining whether to grant the reduction pursuant to (a)(i) of this subsection, the department shall consider, at a minimum, all of the following factors:

(A) Anomalous market conditions;

(B) Disruption in, or lack of supply of, recycled plastics; and

(C) Other factors that have prevented a beverage manufacturer from meeting the requirements.

(b) In lieu of or in addition to assessing a penalty under this section, the department may require a beverage manufacturer to submit a corrective action plan detailing how the beverage manufacturer plans to come into compliance with section 3 of this act.

(4) A beverage manufacturer shall pay the penalty assessed pursuant to this section, as applicable, based on the information reported to the department as required under section 4 of this act in the form and manner prescribed by the department.

(5) A beverage manufacturer may appeal the penalty assessed under this section to the pollution control hearings board within 30 days of assessment.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN PLASTIC HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS. (1) Beginning January 1, 2025, household cleaning and personal care product producers that offer for sale, sell, or distribute in Washington household cleaning and personal care products in plastic household cleaning and personal care product containers must meet minimum postconsumer recycled content as required under subsection (3) of this section.

(2)(a) On or before April 1, 2024, and annually thereafter, household cleaning and personal care product producers that offer for sale, sell, or distribute in Washington household cleaning and personal care products in plastic household cleaning and personal care product containers must register with the department individually or through a third-party representative registering on behalf of a group of household cleaning and personal care product producers.

(b) After January 1, 2025, a household cleaning and personal care product producer that offers for sale, sells, or distributes in Washington household cleaning and personal care products in plastic household cleaning and personal care product containers not registered with the department either individually or through a third party may not sell or supply plastic household cleaning and personal care product containers in or into Washington state.

(c) Registration information must include a list of the household cleaning and personal care product producers and the brand names of the household cleaning and personal care products represented in the registration submittal. Beginning April 1, 2026, registration information may accompany the annual reporting required under section 7 of this act.

(d)(i) By January 31, 2024, and every January 31st thereafter, the department must identify the annual costs it will incur to implement this section and sections 7 and 8 of this act in the next fiscal year, including rule making, and invoices of costs for household cleaning and personal care product producers or their third-party representatives. The department must determine an annual payment by household cleaning and personal care product producers or their third-party representatives that is adequate to cover, but not exceed, the department's full costs to implement, administer, and enforce this section and sections 7 and 8 of this act in the next fiscal year, including rule making. The department must equitably determine payment amounts for an individual household cleaning and personal care product producer and third-party representatives.

(ii) The department must:

(A) Apply any remaining annual payment funds from the current year to the annual payment for the coming year, if the collected annual payment exceeds the department's costs for a given year; and

(B) Increase annual payments for the coming year to cover the department's costs, if the collected annual payment was less than the department's costs for a given year.

(e) By April 1, 2024, and every April 1st thereafter, household cleaning and personal care product producers or their third-party representatives must submit a payment as determined by the department under (d) of this subsection.

(3) A household cleaning and personal care product producer that sells, offers for sale, or distributes plastic household cleaning and personal care product containers in or into Washington must meet the following annual minimum postconsumer recycled content percentage for the total quantity, by weight, of plastic household cleaning and personal care product containers that are sold, offered for sale, or distributed in Washington:

(a) January 1, 2025, through December 31, 2027: No less than 15 percent postconsumer recycled content plastic by weight;

(b) January 1, 2028, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(4)(a) Beginning January 1, 2025, the department may, on an annual basis, review and determine whether to adjust the minimum postconsumer recycled content percentage required pursuant to subsection (3) of this section. The department's review may be initiated by the department or at the petition of the household cleaning and personal care product manufacturing industry not more than once annually. The department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages required pursuant to subsection (3) of this section or below a minimum of 10 percent. In making a determination pursuant to this subsection, the department must consider, at a minimum, all of the following factors:

(i) Changes in market conditions, including supply and demand for postconsumer recycled content plastics, collection rates, and bale availability both domestically and globally;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (3) of this section, including the availability of high quality recycled plastic from plastic container recycling programs;

(iv) The capacity of recycling or processing infrastructure;

(v) The technical feasibility of achieving the minimum postconsumer recycled content requirements pursuant to subsection (3) of this section in plastic household cleaning and personal care product containers that are regulated under 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471, 49 C.F.R. Sec. 178.33b, or 40 C.F.R. Sec. 152.10; and

(vi) The progress made by household cleaning and personal care product producers in achieving the goals of this section.

(b) The household cleaning and personal care product manufacturing industry or a household cleaning and personal care product producer may appeal the department's decision under (a) of this subsection to the pollution control hearings board within 30 days of the department's determination.

(5) A household cleaning and personal care product producer that does not achieve the postconsumer recycled content requirements established under this section is subject to a penalty established in section 8 of this act.

(6) A city, town, county, or municipal corporation may establish local purchasing requirements that include recycled content standards that exceed the minimum recycled content requirements established by this chapter for plastic household cleaning and personal care product containers purchased by a city, town, or municipal corporation, or its contractor. A city, town, county, or municipal corporation may not implement local recycled content requirements for the sale, distribution, or use of plastic household cleaning and personal care product containers that are subject to minimum postconsumer recycled content as required under this section within its jurisdiction.

NEW SECTION. **Sec.**  HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT PRODUCER REPORTING REQUIREMENTS. (1)(a) Beginning April 1, 2026, household cleaning and personal care product producers, individually or through a third party representing a group of producers, must provide an annual report submitted to the department in a format and manner prescribed by the department that includes the amount, by weight, of virgin plastic and the amount, by weight, of postconsumer recycled content, by resin type, used by the household cleaning and personal care product producer for plastic household cleaning and personal care product containers sold, offered for sale, or distributed into Washington state, including the total amount of postconsumer recycled content resins as a percentage of total weight. A producer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the producer declares that state level data are not available or feasible to generate.

(b) The department must post the information reported under this subsection on its website.

(2) A household cleaning and personal care product producer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give consideration to the request, and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN PLASTIC HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS—PENALTIES. (1)(a) Beginning January 1, 2025, a household cleaning and personal care product producer that does not meet the minimum postconsumer recycled content requirements pursuant to section 6 of this act is subject to a penalty pursuant to this section. Beginning May 1, 2026, the penalty must be collected annually, if a penalty reduction has not been approved pursuant to subsection (3) of this section and calculated in accordance with subsection (2) of this section.

(b) A household cleaning and personal care product producer that is assessed a penalty pursuant to this section may pay the penalty to the department in quarterly installments or arrange an alternative payment schedule subject to the approval of the department, not to exceed a 12-month payment plan unless an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(2) Beginning June 1, 2026, and annually thereafter, the department shall invoice any assessed penalty for the previous calendar year based on the postconsumer recycled content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amounts in pounds in the aggregate of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the household cleaning and personal care product producer to produce plastic household cleaning and personal care product containers sold or offered for sale in the state, in accordance with the following:

(a)(i) The annual penalty amount assessed to a household cleaning and personal care product producer must equal the product of both of the following: The total pounds of plastic used multiplied by the relevant minimum postconsumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of postconsumer recycled plastic used; multiplied by 20 cents.

(ii) Example: [(Total pounds of plastic used x minimum postconsumer recycled plastic target percentage) – (Total pounds of plastic used x postconsumer recycled plastic percentage used)] x 20 cents.

(b) For the purposes of (a) of this subsection, both of the following apply:

(i) The total pounds of plastic used must equal the sum of the amount of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the household cleaning and personal care product producer, as reported pursuant to section 7 of this act.

(ii) If the product calculated pursuant to (a) of this subsection is equal to or less than zero, a penalty may not be assessed.

(3)(a)(i) The department shall consider granting a reduction of penalties assessed pursuant to this section for the purpose of meeting the minimum postconsumer recycled content requirements required pursuant to section 6 of this act.

(ii) In determining whether to grant the reduction pursuant to (a)(i) of this subsection, the department shall consider, at a minimum, all of the following factors:

(A) Anomalous market conditions;

(B) Disruption in, or lack of supply of, recycled plastics; and

(C) Other factors that have prevented a household cleaning and personal care product producer from meeting the requirements.

(b) In lieu of or in addition to assessing a penalty under this section, the department may require a household cleaning and personal care product producer to submit a corrective action plan detailing how the household cleaning and personal care product producer plans to come into compliance with section 6 of this act.

(4) A household cleaning and personal care product producer shall pay the penalty assessed pursuant to this section, as applicable, based on the information reported to the department as required under section 7 of this act in the form and manner prescribed by the department.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN PLASTIC HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS—DEPARTMENT DUTIES. (1) The department may conduct audits and investigations for the purpose of ensuring compliance with section 6 of this act based on the information reported under section 7 of this act.

(2) The department shall annually publish a list of registered producers and associated brand names, their compliance status, and other information the department deems appropriate on the department's website.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN TRASH BAGS. (1)(a) Beginning January 1, 2023, plastic trash bag producers that offer for sale, sell, or distribute in Washington plastic trash bags must meet minimum postconsumer recycled content as required under subsection (3) of this section.

(b) Beginning January 1, 2023, plastic trash bag producers shall label each container of plastic trash bags sold, offered for sale, or distributed in Washington with:

(i) The name of the producer and the city, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters; or

(ii) A uniform resource locator or quick response code to an internet website that contains the information required pursuant to (b)(i) of this subsection.

(c) The provisions of (a) of this subsection shall not apply to a bag that is designed and manufactured to hold, store, or transport dangerous waste or biomedical waste. For the purposes of this subsection, "dangerous waste" means any waste defined as dangerous waste under RCW 70A.300.010; and "biomedical waste" means any waste defined as that term under RCW 70A.228.010.

(2)(a) On or before April 1, 2022, and annually thereafter, plastic trash bag producers that offer for sale, sell, or distribute in Washington plastic trash bags must register with the department individually or through a third-party representative registering on behalf of a group of plastic trash bag producers.

(b) After January 1, 2023, a plastic trash bag producer that offers for sale, sells, or distributes in Washington plastic trash bags not registered with the department either individually or through a third party may not sell or supply plastic trash bags in or into Washington state.

(c) Registration information must include a list of the plastic trash bag producers and the brand names of the plastic trash bags represented in the registration submittal. Beginning April 1, 2024, registration information may accompany the annual reporting required under section 11 of this act.

(d)(i) By January 31, 2022, and every January 31st thereafter, the department must identify the annual costs it will incur to implement this section and sections 11 and 12 of this act in the next fiscal year, including rule making, and invoices of costs for plastic trash bag producers or their third-party representatives. The department must determine an annual payment by plastic trash bag producers or their third-party representatives that is adequate to cover, but not exceed, the department's full costs to implement, administer, and enforce this chapter in the next fiscal year, including rule making. The department must equitably determine payment amounts for an individual plastic trash bag producer and third-party representatives.

(ii) The department must:

(A) Apply any remaining annual payment funds from the current year to the annual payment for the coming year, if the collected annual payment exceeds the department's costs for a given year; and

(B) Increase annual payments for the coming year to cover the department's costs, if the collected annual payment was less than the department's costs for a given year.

(e) By April 1, 2022, and every April 1st thereafter, plastic trash bag producers or their third-party representatives must submit a payment as determined by the department under (d) of this subsection.

(3) A plastic trash bag producer that sells, offers for sale, or distributes plastic trash bags in or into Washington must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity, by weight, of plastic trash bags that are sold, offered for sale, or distributed in Washington:

(a) January 1, 2023, through December 31, 2024: No less than 10 percent postconsumer recycled content plastic by weight;

(b) January 1, 2025, through December 31, 2026: No less than 15 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2027: No less than 20 percent postconsumer recycled content plastic by weight.

(4)(a) Beginning January 1, 2024, the department may, on an annual basis, review and determine whether to adjust the minimum postconsumer recycled content percentage required pursuant to subsection (3) of this section. The department's review may be initiated by the department or at the petition of the plastic trash bag manufacturing industry not more than once annually. The department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages required pursuant to subsection (3) of this section or below the minimum percentage required in subsection (3)(a) of this section. In making a determination pursuant to this subsection, the department must consider, at a minimum, all of the following factors:

(i) Changes in market conditions, including supply and demand for postconsumer recycled content plastics, collection rates, and bale availability both domestically and globally;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (3) of this section, including the availability of high quality recycled plastic from flexible plastic recycling programs;

(iv) The capacity of recycling or processing infrastructure; and

(v) The progress made by plastic trash bag producers in achieving the goals of this section.

(b) The plastic trash bag manufacturing industry or a plastic trash bag producer may appeal the department's decision under (a) of this subsection to the pollution control hearings board within 30 days of the department's determination.

(5) A plastic trash bag producer that does not achieve the postconsumer recycled content requirements established under this section is subject to a penalty established in section 12 of this act.

(6) A city, town, county, or municipal corporation may establish local purchasing requirements that include recycled content standards that exceed the minimum recycled content requirements established by this chapter for plastic trash bags purchased by a city, town, or municipal corporation, or its contractor. A city, town, county, or municipal corporation may not implement local recycled content requirements for the sale, distribution, or use of plastic trash bags that are subject to minimum postconsumer recycled content as required under this section within its jurisdiction.

(7) The department may enter into a contract for the services required to implement this chapter and related duties of the department.

NEW SECTION. **Sec.**  PLASTIC TRASH BAG PRODUCER REPORTING REQUIREMENTS. (1)(a) Beginning April 1, 2024, plastic trash bag producers, individually or through a third party representing a group of producers, must provide an annual report submitted to the department in a format and manner prescribed by the department, that includes:

(i) The amount of virgin plastic and the amount of postconsumer recycled content by resin type used for plastic trash bags manufactured by the plastic trash bag producer that are sold, offered for sale, or distributed into Washington state, including the total postconsumer recycled content resins as a percentage of total weight. A producer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the producer declares that state level data is not available or feasible to generate.

(ii) Proof of certification conducted by a third-party certification entity of the recycled content for each type of plastic trash bag containing postconsumer recycled content offered for sale, sold, or distributed in Washington.

(b) The department must post the information reported under this subsection on its website.

(2) A plastic trash bag producer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give consideration to the request, and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN TRASH BAGS—PENALTIES. (1)(a) Beginning January 1, 2023, a plastic trash bag producer that does not meet the minimum postconsumer recycled content requirements pursuant to section 10 of this act is subject to a penalty pursuant to this section. Beginning March 1, 2024, the penalty must be collected annually, if a penalty reduction has not been approved pursuant to subsection (3) of this section and calculated in accordance with subsection (2) of this section.

(b) A plastic trash bag producer that is assessed a penalty pursuant to this section may pay the penalty to the department in quarterly installments or arrange an alternative payment schedule subject to the approval of the department, not to exceed a 12-month payment plan unless an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(2) Beginning June 1, 2024, and annually thereafter, the department shall invoice any assessed penalty for the previous calendar year based on the postconsumer recycled content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amounts in pounds in the aggregate of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the plastic trash bag producer to produce plastic trash bags sold or offered for sale in the state, in accordance with the following:

(a)(i) The annual penalty amount assessed to a plastic trash bag producer must equal the product of both of the following: The total pounds of plastic used multiplied by the relevant minimum postconsumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of postconsumer recycled plastic used; multiplied by 20 cents.

(ii) Example: [(Total pounds of plastic used x minimum postconsumer recycled plastic target percentage) – (Total pounds of plastic used x postconsumer recycled plastic percentage used)] x 20 cents.

(b) For the purposes of (a) of this subsection, both of the following apply:

(i) The total pounds of plastic used must equal the sum of the amount of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the plastic trash bag producer, as reported pursuant to section 11 of this act.

(ii) If the product calculated pursuant to (a) of this subsection is equal to or less than zero, a penalty may not be assessed.

(3)(a)(i) The department shall consider granting a reduction of penalties assessed pursuant to this section for the purpose of meeting the minimum postconsumer recycled content requirements required pursuant to section 10 of this act.

(ii) In determining whether to grant the reduction pursuant to (a)(i) of this subsection, the department shall consider, at a minimum, all of the following factors:

(A) Anomalous market conditions;

(B) Disruption in, or lack of supply of, recycled plastics; and

(C) Other factors that have prevented a plastic trash bag producer from meeting the requirements.

(b) In lieu of or in addition to assessing a penalty under this section, the department may require a plastic trash bag producer to submit a corrective action plan detailing how the plastic trash bag producer plans to come into compliance with section 10 of this act.

(4) A plastic trash bag producer shall pay the penalty assessed pursuant to this section, as applicable, based on the information reported to the department as required under section 11 of this act in the form and manner prescribed by the department.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT IN TRASH BAGS—DEPARTMENT DUTIES. (1) The department may conduct audits and investigations for the purpose of ensuring compliance with section 10 of this act based on the information reported under section 11 of this act.

(2) The department shall annually publish a list of registered producers and associated brand names, their compliance status, and other information the department deems appropriate on the department's website.

NEW SECTION. **Sec.**  A new section is added to chapter 39.26 RCW to read as follows:

POSTCONSUMER RECYCLED CONTENT IN PLASTIC TRASH BAGS—PURCHASING PRIORITY.

(1) Beginning January 1, 2023, all state agencies shall purchase plastic trash bags manufactured by plastic trash bag producers that comply with the minimum recycled content requirements pursuant to section 10 of this act.

(2) By June 1, 2022, the department of ecology shall provide to the department a list of the plastic trash bag producer brands that comply with the minimum recycled content requirements pursuant to section 10 of this act, in order for state agencies to purchase compliant products, updated annually.

NEW SECTION. **Sec.**  (1) By May 1, 2021, the department of commerce shall convene a stakeholder advisory committee to make recommendations on the development of mandatory postconsumer recycled content requirements for plastic packaging. By November 15, 2021, the department of commerce shall submit a report to the legislature containing the recommendations of the stakeholder advisory committee. The report must include recommendations where general stakeholder consensus has been achieved and note dissenting opinions where stakeholder consensus has not been achieved. The stakeholder advisory committee shall make recommendations using consensus-based decision making on the following:

(a) Definitions;

(b) Methods for determining responsible parties;

(c) Methods for determining, reporting, and certifying recycled content compliance;

(d) The rates of mandatory postconsumer recycled content required by material type and target implementation dates;

(e) Methods for verifying claims on recycled content;

(f) Registration of producers;

(g) Administration of the program created in this act;

(h) Enforcement; and

(i) Exemptions and exceptions.

(2) The stakeholder advisory committee shall consider information and findings by a variety of authoritative bodies related to recycled content, including mechanical and advanced recycling technologies.

(3) The president of the senate and the speaker of the house of representatives shall jointly appoint at least one member to the stakeholder advisory committee from each of the following:

(a) The department of commerce;

(b) The department of ecology;

(c) The utilities and transportation commission;

(d) Cities, including both small and large cities and cities located in urban and rural counties;

(e) Counties, including both small and large counties and urban and rural counties;

(f) Municipal collectors;

(g) A representative from the private sector waste and recycling industry that owns or operates a curbside recycling program and a material recovery facility;

(h) A solid waste collection company regulated under chapter 81.77 RCW that provides curbside recycling services;

(i) A material recovery facility operator that processes municipal solid waste from curbside recycling programs;

(j) A company that provides curbside recycling service pursuant to a municipal contract under RCW 81.77.020;

(k) A trade association that represents the private sector solid waste industry;

(l) Recycled plastic feedstock users;

(m) A trade association representing the plastics recycling industry;

(n) A recycled content certification organization;

(o) An environmental justice organization;

(p) An environmental nonprofit organization;

(q) An environmental nonprofit organization that specializes in waste and recycling issues;

(r) Plastic converters/manufacturers of resins;

(s) A manufacturer of plastic packaging;

(t) A statewide general business trade association;

(u) Associations that represent consumer brand companies;

(v) Representatives of consumer brands;

(w) A consumer-oriented organization;

(x) Representatives of the state's most marginalized communities;

(y) A retailer or representative of the retail association;

(z) A representative of an advanced recycling technology provider that processes plastic material;

(aa) An association that represents cities;

(bb) An association that represents county solid waste managers;

(cc) A representative from a retail grocery association; and

(dd) A representative from a Washington headquartered online retailer.

(4) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

(5) This section expires January 1, 2023.

NEW SECTION. **Sec.**  EXPANDED POLYSTYRENE PROHIBITIONS. (1) Beginning June 1, 2023, the sale and distribution of the following expanded polystyrene products in or into the state is prohibited:

(a) A portable container that is designed or intended to be used for cold storage, except for expanded polystyrene containers used for drugs, medical devices, and biological materials as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable commodities from a wholesale or retail establishment;

(b) Food service products that include food containers, plates, clam shell-style containers, and hot and cold beverage cups. For the purposes of this subsection (1)(b), food service products do not include: Packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood, vegetables, fruit, or egg cartons; and

(c) Void filling packaging products, which means loose fill packaging material, also referred to as packing peanuts.

(2)(a) The department must provide technical assistance and guidance to manufacturers of prohibited expanded polystyrene products, as requested. For manufacturers out of compliance with the requirements of this section, the department shall provide written notification and offer information to manufacturers that sell prohibited expanded polystyrene products who are in violation of this section. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(b) A manufacturer of products in violation of this section is subject to a civil penalty for each violation in an amount not to exceed:

(i) $250 if it is the manufacturer's first penalty; and

(ii) $1,000 if the manufacturer has previously been issued a civil penalty under this section.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(3) A city, town, county, or municipal corporation may not implement a local ordinance restricting products prohibited under subsection (1) of this section unless the ordinance was filed by April 1, 2021, and enacted by June 1, 2021. An ordinance restricting products specified under subsection (1) of this section that was not enacted as of June 1, 2021, is preempted by this section.

(4) For the purposes of this section, "manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that:

(a) Produces the products subject to restrictions in subsection (1) of this section; or

(b) Is an importer or domestic distributor of a product subject to restrictions in subsection (1) of this section sold or offered for sale in or into the state.

NEW SECTION. **Sec.**  OPTIONAL SERVICEWARE. (1) Beginning January 1, 2022:

(a) Except as provided in (c) of this subsection, a food service business at which the opportunity is provided for the on-site consumption of food or beverages may provide the following types of single-use food service products only upon request:

(i) Utensils;

(ii) Straws;

(iii) Condiment packaging; and

(iv) Beverage cup lids.

(b) Except as provided in (c) of this subsection, the following food service businesses may provide types of single-use food service products identified in (a) of this subsection only after affirming that the customer wants the single-use food service products:

(i) A food service business at which no opportunity is provided for the on-site consumption of food or beverages; or

(ii) A food service business serving food or beverages to customers via a drive-through.

(c) A food service business may provide beverage cup lids without request for:

(i) Hot beverages;

(ii) Beverages provided through delivery service or curbside pickup; and

(iii) Beverages served to customers via a drive-through.

(2) Nothing in this section prohibits a food service business from making utensils, straws, condiments, and beverage cup lids available to customers using cylinders, bins, dispensers, containers, or other means of allowing for single-use utensils, straws, condiments, and beverage cup lids to be obtained at the affirmative volition of the customer. Utensils provided by a food service business for use by customers may not be bundled or packaged in plastic in such a way that a customer is unable to take only the type of single-use utensil or utensils desired without also taking a different type or types of utensil.

(3)(a) The department may issue a civil penalty of no less than $150 per day and no more than $2,000 per day to the owner or operator of a food service business for each day single-use food service products are provided in violation of this section.

(b) The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) A food service business may appeal penalties assessed under this subsection to the pollution control hearings board within 30 days of assessment.

(4) Beginning July 1, 2021, a city, town, county, or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring a request of single-use food service products by the customer of the food service business or other retail establishment.

NEW SECTION. **Sec.**  DEPARTMENT DUTIES. (1) The department may conduct audits and investigations for the purpose of ensuring compliance with sections 3, 6, and 10 of this act based on the information reported under sections 4, 7, and 11 of this act.

(2) To assist with the requirements specified under sections 16 and 17 of this act, the department:

(a) Must prepare and post on its website information regarding the prohibitions on the sale and distribution of expanded polystyrene products as specified under section 16 of this act and optional serviceware under section 17 of this act;

(b) For education and outreach to help implement sections 16 and 17 of this act, may develop culturally appropriate and translated educational materials and resources for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states.

(3) The department may adopt rules as necessary to administer, implement, and enforce this chapter.

NEW SECTION. **Sec.**  RECYCLING ENHANCEMENT ACCOUNT. The recycling enhancement account is created in the custody of the state treasurer. All penalties collected by the department pursuant to sections 5, 8, and 12 of this act must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for providing grants to local governments for the purpose of supporting local solid waste and financial assistance programs.

NEW SECTION. **Sec.**  RECYCLED CONTENT ACCOUNT. The recycled content account is created in the custody of the state treasurer. All receipts received by the department under sections 3, 6, and 10 of this act must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for implementing, administering, and enforcing the requirements of sections 3 through 13 of this act.

NEW SECTION. **Sec.**  MARKET STUDY. (1) Subject to the availability of amounts appropriated for this specific purpose prior to January 1, 2028, the department shall contract with a research university or an independent third-party consultant to study the polyethylene terephthalate and high-density polyethylene markets for all of the following:

(a) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum postconsumer recycled content requirements for plastic beverage containers pursuant to sections 3 and 4 of this act;

(b) Determining the data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry; and

(c) Recommending further policy modifications and measures to achieve the state's recycling targets with the least cost and optimal efficiency.

(2) If funding is provided pursuant to subsection (1) of this section and the department undertakes the study, the study must be completed by May 1, 2029.

**Sec.**  RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035 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, sections 16 and 17 of this act, 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, sections 3, 6, and 10 of this act, 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 sections 3, 5, 6, 8, 10, and 12 of this act, to assess penalties and to set recycled minimum postconsumer content for plastic beverage containers.

(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.

**Sec.**  RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, sections 16 and 17 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

**Sec.**  RCW 70A.220.020 and 2020 c 20 s 1228 are each amended to read as follows:

((~~(1) The provisions of this section and any rules adopted under this section shall be interpreted to conform with nationwide plastics industry standards.~~

~~(2)~~)) Except as provided in RCW 70A.220.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. ((~~The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number.~~)) The numbers and letters used shall be as follows:

(a) 1.= PETE (polyethylene terephthalate)

(b) 2.= HDPE (high density polyethylene)

(c) 3.= V (vinyl) or PVC (polyvinyl chloride)

(d) 4.= LDPE (low density polyethylene)

(e) 5.= PP (polypropylene)

(f) 6.= PS (polystyrene)

(g) 7.= OTHER

NEW SECTION. **Sec.**  Sections 2 through 13 and 16 through 21 of this act constitute a new chapter in Title 70A RCW.

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

**--- END ---**