

2SHB 1663 - H AMD 896

By Representative Duerr

ADOPTED AS AMENDED 02/11/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

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

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

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

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

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

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

27 (7) "Emission" means a release of air contaminants into the
28 ambient air.

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

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

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

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

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

16 NEW SECTION. **Sec. 2.** (1) This chapter applies to all municipal
17 solid waste landfills that received solid waste after January 1,
18 1992, except as provided in subsection (2) of this section.

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

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

23 (b) Landfills that receive only inert waste or nondecomposable
24 wastes.

25 (3) The department must adopt rules to implement this chapter.
26 The rules adopted by the department must be informed by landfill
27 methane regulations adopted by the California air resources board,
28 the Oregon environmental quality commission, and the United States
29 environmental protection agency.

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

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

1 (b) The waste in place report must be submitted annually until
2 either:

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

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

7 (2) Each owner or operator of either an active municipal solid
8 waste landfill having greater than or equal to 450,000 tons of waste
9 in place or a closed municipal solid waste landfill having greater
10 than or equal to 750,000 tons of waste in place must calculate the
11 landfill gas heat input capacity pursuant to section 8 of this act
12 and the department's implementing rules and must submit a landfill
13 gas heat input capacity report to the department or local authority.

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

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

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

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

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

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

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

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

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

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

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

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

23 (II) All instantaneous surface monitoring records.

24 NEW SECTION. **Sec. 4.** (1) The owner or operator of any municipal
25 solid waste landfill that has a calculated landfill gas heat input
26 capacity greater than or equal to 3,000,000 British thermal units per
27 hour recovered must install a gas collection and control system that
28 meets the requirements of this section and the department's
29 implementing rules adopted pursuant to section 2 of this act, unless
30 the owner or operator demonstrates to the satisfaction of the
31 department or local authority that after four consecutive quarterly
32 monitoring periods there is no measured concentration of methane of
33 200 parts per million by volume or greater using the instantaneous
34 surface monitoring procedures specified in section 8 of this act and
35 the department's implementing rules adopted pursuant to section 2 of
36 this act. The owner or operator of a municipal solid waste landfill
37 may partner with a third party to operate all or a portion of the gas
38 collection and control system, but the obligation to comply with the
39 requirements of this chapter, and the liability for civil penalties

1 issued pursuant to this chapter, remain the responsibility of the
2 owner or operator of the municipal solid waste landfill.

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

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

12 (4) The gas collection and control system, if it uses a flare,
13 must achieve a methane destruction efficiency of at least 99 percent
14 by weight and must use either an enclosed flare or, if the system
15 uses an open flare, the open flare must comply with the following
16 requirements:

17 (a) The open flare must meet the requirements of 40 C.F.R. Sec.
18 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

19 (b) An open flare installed and operating prior to August 1,
20 2022, may operate until January 1, 2032, unless the owner or operator
21 demonstrates to the satisfaction of the department or local authority
22 that the landfill gas heat input capacity is less than 3,000,000
23 British thermal units per hour pursuant to section 8 of this act and
24 the department's implementing rules adopted pursuant to section 2 of
25 this act and is insufficient to support the continuous operation of
26 an enclosed flare or other gas control device; and

27 (c) The owner or operator may temporarily operate an open flare
28 during the repair or maintenance of the gas control system, or while
29 awaiting the installation of an enclosed flare, or to address offsite
30 gas migration issues. Any owner or operator seeking to temporarily
31 operate an open flare must submit a written request to the department
32 or local authority pursuant to section 10 of this act and the
33 department's implementing rules adopted pursuant to section 2 of this
34 act.

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

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

4 (a) The device or devices must achieve a methane destruction
5 efficiency of at least 97 percent by weight; and

6 (b) If a boiler or a process heater is used as the gas control
7 device, the landfill gas stream must be introduced into the flame
8 zone, except that where the landfill gas is not the primary fuel for
9 the boiler or process heater, introduction of the landfill gas stream
10 into the flame zone is not required.

11 (7) If a gas collection and control system routes the collected
12 gas to a treatment system that processes the collected gas for
13 subsequent sale or use, the treatment system must achieve a methane
14 leak rate of three percent or less by weight. Venting of processed
15 landfill gas to the ambient air is not allowed. If the processed
16 landfill gas cannot be routed for subsequent sale or use, then the
17 treated landfill gas must be controlled according to subsection (4)
18 of this section.

19 (8) The owner or operator of a municipal solid waste landfill
20 must conduct an annual source test for any gas control device or
21 devices subject to this section using the test methods identified in
22 section 8 of this act and the department's implementing rules adopted
23 pursuant to section 2 of this act. If a gas control device remains in
24 compliance after three consecutive annual source tests, then the
25 owner or operator may conduct the source test once every three years.
26 If a subsequent source test shows the gas collection and control
27 system is out of compliance, then the source testing frequency must
28 return to testing on an annual basis.

29 NEW SECTION. **Sec. 5.** (1) Except as provided in section 4 of
30 this act, beginning January 1st of the year following the year in
31 which the department adopts rules to implement this chapter, or upon
32 commencing operation of a newly installed gas collection and control
33 system or modification of an existing gas collection and control
34 system pursuant to section 4 of this act, whichever is later, no
35 location on a municipal solid waste landfill surface may exceed the
36 following methane concentration limits, dependent upon whether the
37 owner or operator of the municipal solid waste landfills conducts,
38 pursuant to section 6 of this act, instantaneous surface emissions
39 monitoring or integrated surface emissions monitoring:

1 (a) Five hundred parts per million by volume, other than
2 nonrepeatable, momentary readings, as determined by instantaneous
3 surface emissions monitoring; or

4 (b) An average methane concentration limit of 25 parts per
5 million by volume as determined by integrated surface emissions
6 monitoring.

7 (2) Any reading exceeding the limits set forth in subsection (1)
8 of this section must be recorded as an exceedance and the following
9 actions must be taken:

10 (a) The owner or operator must record the date, location, and
11 value of each exceedance, along with retest dates and results. The
12 location of each exceedance must be clearly marked and identified on
13 a topographic map of the municipal solid waste landfill, drawn to
14 scale, with the location of both the monitoring grids and the gas
15 collection system clearly identified; and

16 (b) The owner or operator must take corrective action, which may
17 include, but not be limited to, maintenance or repair of the cover,
18 or well vacuum adjustments. The location or locations of any
19 exceedance must be remonitored within 10 calendar days of a measured
20 exceedance.

21 (3) The requirements of this section do not apply to:

22 (a) The working face of the landfill;

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

29 (c) Areas of the landfill surface where the landfill cover
30 material has been removed for law enforcement activities requiring
31 excavation; or

32 (d) Areas of the landfill in which the landfill owner or
33 operator, or a designee of the owner or operator, is engaged in
34 active mining for minerals or metals.

35 NEW SECTION. **Sec. 6.** (1) The owner or operator of a municipal
36 solid waste landfill with a gas collection and control system must
37 conduct instantaneous or integrated surface monitoring of the
38 landfill surface according to the requirements specified in

1 implementing rules adopted by the department pursuant to section 2 of
2 this act.

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

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

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

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

23 (3) The owner or operator of a municipal solid waste landfill
24 that ceases to accept waste must submit a closure notification to the
25 department or local authority within 30 days of ceasing to accept
26 waste.

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

32 (5) The owner or operator of either an active municipal solid
33 waste landfill with 450,000 or more tons of waste in place or a
34 closed municipal solid waste landfill with 750,000 or more tons of
35 waste in place must prepare an annual report for the period of
36 January 1st through December 31st of each year. The annual report
37 must include a calculation of landfill gas heat input capacity. Each
38 annual report must be submitted to the department and local authority

1 during the subsequent calendar year, with the date of submission to
2 be established through rules adopted by the department.

3 (6) The owner or operator of an active municipal solid waste
4 landfill with fewer than 450,000 tons of waste in place must submit a
5 waste in place report to the department or local authority.

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

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

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

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

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

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

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

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

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

1 (a) The gas collection and control system was in operation for at
2 least 15 years, unless the owner or operator demonstrates to the
3 satisfaction of the department or local authority that due to
4 declining methane rates, the municipal solid waste landfill will be
5 unable to operate the gas collection and control system for a 15 year
6 period;

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

9 (c) The owner or operator submits an equipment removal report to
10 the department or local authority pursuant to section 7 of this act
11 and the department's implementing rules adopted pursuant to section 2
12 of this act.

13 (2) Nothing in this section may be interpreted to modify or
14 supersede requirements related to the capping or removal of gas
15 collection and control systems that may exist under the state clean
16 air act, the federal clean air act, or rules adopted pursuant to
17 either the state clean air act or the federal clean air act.

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

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

33 (3) The department must review the requested alternatives and
34 either approve or disapprove the alternatives within 120 days. The
35 department may request that additional information be submitted as
36 part of the review of the requested alternatives.

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

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

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

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

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

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

22 (1) A person is a covered entity as of the beginning of the first
23 compliance period and all subsequent compliance periods if the person
24 reported emissions under RCW 70A.15.2200 for any calendar year from
25 2015 through 2019, or if additional data provided as required by this
26 chapter indicates that emissions for any calendar year from 2015
27 through 2019 equaled or exceeded any of the following thresholds, or
28 if the person is a first jurisdictional deliverer and imports
29 electricity into the state during the compliance period:

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

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

1 (c) Where the person is a first jurisdictional deliverer
2 importing electricity into the state and the cumulative annual total
3 of emissions associated with the imported electricity, whether from
4 specified or unspecified sources, exceeds 25,000 metric tons of
5 carbon dioxide equivalent. In consultation with any linked
6 jurisdiction to the program created by this chapter, by October 1,
7 2026, the department, in consultation with the department of commerce
8 and the utilities and transportation commission, shall adopt by rule
9 a methodology for addressing imported electricity associated with a
10 centralized electricity market;

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

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

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

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

1 (2) A person is a covered entity as of the beginning of the
2 second compliance period and all subsequent compliance periods if the
3 person reported emissions under RCW 70A.15.2200 or provided emissions
4 data as required by this chapter for any calendar year from 2023
5 through 2025, where the person owns or operates a waste to energy
6 facility utilized by a county and city solid waste management program
7 and the facility's emissions equal or exceed 25,000 metric tons of
8 carbon dioxide equivalent.

9 (3) ~~((a))~~ A person is a covered entity beginning January 1,
10 2031, and all subsequent compliance periods if the person reported
11 emissions under RCW 70A.15.2200 or provided emissions data as
12 required by this chapter for any calendar year from 2027 through
13 2029, where the person owns or operates a ~~((~~

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

17 ~~(ii) Railroad)~~ railroad company, as that term is defined in RCW
18 81.04.010, and the railroad company's emissions equal or exceed
19 25,000 metric tons of carbon dioxide equivalent.

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

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

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

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

33 (4) When a covered entity reports, during a compliance period,
34 emissions from a facility under RCW 70A.15.2200 that are below the
35 thresholds specified in subsection (1) or (2) of this section, the
36 covered entity continues to have a compliance obligation through the
37 current compliance period. When a covered entity reports emissions
38 below the threshold for each year during an entire compliance period,
39 or has ceased all processes at the facility requiring reporting under
40 RCW 70A.15.2200, the entity is no longer a covered entity as of the

1 beginning of the subsequent compliance period unless the department
2 provides notice at least 12 months before the end of the compliance
3 period that the facility's emissions were within 10 percent of the
4 threshold and that the person will continue to be designated as a
5 covered entity in order to ensure equity among all covered entities.
6 Whenever a covered entity ceases to be a covered entity, the
7 department shall notify the appropriate policy and fiscal committees
8 of the legislature of the name of the entity and the reason the
9 entity is no longer a covered entity.

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

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

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

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

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

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

7 (d) Carbon dioxide emissions from the combustion of biomass or
8 biofuels;

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

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

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

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

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

35 (9) (a) The legislature intends to promote a growing and
36 sustainable economy and to avoid leakage of emissions from
37 manufacturing to other locations. The legislature further intends to
38 see innovative new businesses locate and grow in Washington that
39 contribute to Washington's prosperity and environmental objectives.

1 (b) Consistent with the intent of the legislature to avoid the
2 leakage of emissions to other jurisdictions, in achieving the state's
3 greenhouse gas limits in RCW 70A.45.020, the state, including lead
4 agencies under chapter 43.21C RCW, shall pursue the limits in a
5 manner that recognizes that the siting and placement of new or
6 expanded best-in-class facilities with lower carbon emitting
7 processes is in the economic and environmental interests of the state
8 of Washington.

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

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

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

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

34 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
35 43.05.150, and in addition to or as an alternate to any other penalty
36 provided by law, any person who violates any of the provisions of
37 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~or 70A.60~~) 70A.535
38 (~~RCW~~), or 70A.--- RCW (the new chapter created in section 17 of
39 this act), RCW 76.04.205, or any of the rules in force under such

1 chapters or section may incur a civil penalty in an amount not to
2 exceed ten thousand dollars per day for each violation. Each such
3 violation shall be a separate and distinct offense, and in case of a
4 continuing violation, each day's continuance shall be a separate and
5 distinct violation. Enforcement actions related to violations of RCW
6 76.04.205 must be consistent with the provisions of RCW 76.04.205.

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

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

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

20 (3) Each act of commission or omission which procures, aids or
21 abets in the violation shall be considered a violation under the
22 provisions of this section and subject to the same penalty. The
23 penalties provided in this section shall be imposed pursuant to RCW
24 43.21B.300.

25 (4)(a) Except as provided in (b) of this subsection, all
26 penalties recovered under this section by the department or the
27 department of natural resources shall be paid into the state treasury
28 and credited to the air pollution control account established in RCW
29 70A.15.1010 or, if recovered by the authority, shall be paid into the
30 treasury of the authority and credited to its funds. If a prior
31 penalty for the same violation has been paid to a local authority,
32 the penalty imposed by the department under subsection (1) of this
33 section shall be reduced by the amount of the payment.

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

37 (5) To secure the penalty incurred under this section, the state
38 or the authority shall have a lien on any vessel used or operated in
39 violation of this chapter which shall be enforced as provided in RCW
40 60.36.050.

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

5 (7) In addition to other penalties provided by this chapter,
6 persons knowingly underreporting emissions or other information used
7 to set fees, or persons required to pay emission or permit fees who
8 are more than ninety days late with such payments may be subject to a
9 penalty equal to three times the amount of the original fee owed.

10 (8) The department shall develop rules for excusing excess
11 emissions from enforcement action if such excess emissions are
12 unavoidable. The rules shall specify the criteria and procedures for
13 the department and local air authorities to determine whether a
14 period of excess emissions is excusable in accordance with the state
15 implementation plan.

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

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

28 (2) The amounts collected and allocated in accordance with this
29 section shall be expended upon appropriation except as otherwise
30 provided in this section and in accordance with the following
31 limitations:

32 Portions of moneys received by the department of ecology from the
33 air pollution control account shall be distributed by the department
34 to local authorities based on:

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

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

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

4 (3) The air operating permit account is created in the custody of
5 the state treasurer. All receipts collected by or on behalf of the
6 department from permit program sources under RCW 70A.15.2210(1),
7 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into
8 the account. Expenditures from the account may be used only for the
9 activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270,
10 and 70A.15.2230(7). Moneys in the account may be spent only after
11 appropriation.

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

14 NEW SECTION. **Sec. 18.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected."

18 Correct the title.

EFFECT: Changes the age of municipal solid waste landfills covered under the bill, from landfills that received waste after January 1, 1977, to landfills that received waste after January 1, 1992.

Changes the size of closed municipal solid waste landfills covered under the bill to closed landfills that have greater than or equal to 750,000 tons of waste in place.

Requires that, if a gas collection and control system routes collected gas to an energy recovery device, the device must achieve a methane destruction efficiency of at least 97% rather than achieve a methane leak rate of 3% or less by weight.

Provides that if a gas collection and control system routes the collected gas to a treatment system that processes the collected gas for subsequent sale or use, the treatment system, rather than the entire gas collection and control system, must achieve a methane leak rate of three percent or less by weight.

Authorizes owners and operators of municipal solid waste landfills to choose to conduct instantaneous surface emissions monitoring or integrated surface emissions monitoring.

Establishes a process for remonitoring and corrective actions in the event of an exceedance of surface emissions standards.

Requires the owner or operator of a municipal solid waste landfill to provide notice of capping a well within 30 days of capping the well, rather than 30 days prior to capping the well.

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