
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1663

State of Washington

67th Legislature

2022 Regular Session

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

READ FIRST TIME 02/07/22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 2.** (1) This chapter applies to all municipal
31 solid waste landfills that received solid waste after January 1,
32 1992, except as provided in subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (II) All instantaneous surface monitoring records.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (8) The owner or operator of a municipal solid waste landfill
34 must conduct a source test for any gas control device or devices
35 subject to this section using the test methods identified in section
36 8 of this act and the department's implementing rules adopted
37 pursuant to section 2 of this act. If a gas control device is
38 currently in compliance with source testing requirements as of the
39 effective date of the act, the owner or operator must conduct the
40 source test no less frequently than once every five years. If a gas

1 control device is currently not in compliance with source testing
2 requirements as of the effective date of the act, or if a subsequent
3 source test shows the gas control device is out of compliance, the
4 owner or operator must conduct the source test no less frequently
5 than once per year until two subsequent consecutive tests both show
6 compliance. Upon two subsequent consecutive compliant tests, the
7 owner or operator may return to conducting the source test no less
8 frequently than once every five years.

9 NEW SECTION. **Sec. 5.** (1) Except as provided in section 4 of
10 this act, beginning January 1st of the year following the year in
11 which the department adopts rules to implement this chapter, or upon
12 commencing operation of a newly installed gas collection and control
13 system or modification of an existing gas collection and control
14 system pursuant to section 4 of this act, whichever is later, no
15 location on a municipal solid waste landfill surface may exceed the
16 following methane concentration limits, dependent upon whether the
17 owner or operator of the municipal solid waste landfills conducts,
18 pursuant to section 6 of this act, instantaneous surface emissions
19 monitoring or integrated surface emissions monitoring:

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

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

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

29 (a) The owner or operator must record the date, location, and
30 value of each exceedance, along with retest dates and results. The
31 location of each exceedance must be clearly marked and identified on
32 a topographic map of the municipal solid waste landfill, drawn to
33 scale, with the location of both the monitoring grids and the gas
34 collection system clearly identified; and

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

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

2 (a) The working face of the landfill;

3 (b) Areas of the landfill surface where the landfill cover
4 material has been removed for the purpose of installing, expanding,
5 replacing, or repairing components of the landfill cover system, the
6 landfill gas collection and control system, the leachate collection
7 and removal system, or a landfill gas condensate collection and
8 removal system;

9 (c) Areas of the landfill surface where the landfill cover
10 material has been removed for law enforcement activities requiring
11 excavation; or

12 (d) Areas of the landfill in which the landfill owner or
13 operator, or a designee of the owner or operator, is engaged in
14 active mining for minerals or metals.

15 NEW SECTION. **Sec. 6.** (1) The owner or operator of a municipal
16 solid waste landfill with a gas collection and control system must
17 conduct instantaneous or integrated surface monitoring of the
18 landfill surface according to the requirements specified in
19 implementing rules adopted by the department pursuant to section 2 of
20 this act.

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

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

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

34 (2) The owner or operator of a municipal solid waste landfill
35 must maintain records related to monitoring, testing, landfill
36 operations, and the operation of the gas control device, gas
37 collection system, and gas control system. The records must be
38 provided by the owner or operator to the department or local

1 authority within five business days of a request from the department
2 or local authority.

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

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

12 (5) The owner or operator of either an active municipal solid
13 waste landfill with 450,000 or more tons of waste in place or a
14 closed municipal solid waste landfill with 750,000 or more tons of
15 waste in place must prepare an annual report for the period of
16 January 1st through December 31st of each year. The annual report
17 must include a calculation of landfill gas heat input capacity. Each
18 annual report must be submitted to the department and local authority
19 during the subsequent calendar year, with the date of submission to
20 be established through rules adopted by the department.

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

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

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

32 (3) The owner or operator of a municipal solid waste landfill
33 must measure the landfill surface concentration of methane using a
34 hydrocarbon detector meeting the requirements of this section and the
35 department's implementing rules adopted pursuant to section 2 of this
36 act.

37 (4) The owner or operator of a municipal solid waste landfill
38 must measure leaks using a hydrocarbon detector meeting the

1 requirements of this section and the department's implementing rules
2 adopted pursuant to section 2 of this act.

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

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

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

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

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

18 (a) The gas collection and control system was in operation for at
19 least 15 years, unless the owner or operator demonstrates to the
20 satisfaction of the department or local authority that due to
21 declining methane rates, the municipal solid waste landfill will be
22 unable to operate the gas collection and control system for a 15 year
23 period;

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

26 (c) The owner or operator submits an equipment removal report to
27 the department or local authority pursuant to section 7 of this act
28 and the department's implementing rules adopted pursuant to section 2
29 of this act.

30 (2) Nothing in this section may be interpreted to modify or
31 supersede requirements related to the capping or removal of gas
32 collection and control systems that may exist under the state clean
33 air act, the federal clean air act, or rules adopted pursuant to
34 either the state clean air act or the federal clean air act.

35 NEW SECTION. **Sec. 10.** (1) The owner or operator of a municipal
36 solid waste landfill may request alternatives to the compliance
37 measures, monitoring requirements, and test methods and procedures
38 set forth in sections 4, 6, and 8 of this act, and the department's

1 implementing rules adopted pursuant to section 2 of this act. Any
2 alternatives requested by the owner or operator must be submitted in
3 writing to the department.

4 (2) The criteria that the department may use to evaluate
5 alternative compliance option requests include, but are not limited
6 to: Compliance history; documentation containing the landfill gas
7 flow rate and measured methane concentrations for individual gas
8 collection wells or components; permits; component testing and
9 surface monitoring results; gas collection and control system
10 operation, maintenance, and inspection records; and historical
11 meteorological data.

12 (3) The department must review the requested alternatives and
13 either approve or disapprove the alternatives within 120 days. The
14 department may request that additional information be submitted as
15 part of the review of the requested alternatives.

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

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

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

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

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

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

3 (1) A person is a covered entity as of the beginning of the first
4 compliance period and all subsequent compliance periods if the person
5 reported emissions under RCW 70A.15.2200 for any calendar year from
6 2015 through 2019, or if additional data provided as required by this
7 chapter indicates that emissions for any calendar year from 2015
8 through 2019 equaled or exceeded any of the following thresholds, or
9 if the person is a first jurisdictional deliverer and imports
10 electricity into the state during the compliance period:

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

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

18 (c) Where the person is a first jurisdictional deliverer
19 importing electricity into the state and the cumulative annual total
20 of emissions associated with the imported electricity, whether from
21 specified or unspecified sources, exceeds 25,000 metric tons of
22 carbon dioxide equivalent. In consultation with any linked
23 jurisdiction to the program created by this chapter, by October 1,
24 2026, the department, in consultation with the department of commerce
25 and the utilities and transportation commission, shall adopt by rule
26 a methodology for addressing imported electricity associated with a
27 centralized electricity market;

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

34 (e)(i) Where the person supplies natural gas in amounts that
35 would result in exceeding 25,000 metric tons of carbon dioxide
36 equivalent emissions if fully combusted or oxidized, excluding the
37 amounts for fuel products that are produced or imported with a
38 documented final point of delivery outside of Washington and
39 combusted outside of Washington, and excluding the amounts: (A)

1 Supplied to covered entities under (a) through (d) of this
2 subsection; and (B) delivered to opt-in entities;

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

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

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

26 (3) ~~((a))~~ A person is a covered entity beginning January 1,
27 2031, and all subsequent compliance periods if the person reported
28 emissions under RCW 70A.15.2200 or provided emissions data as
29 required by this chapter for any calendar year from 2027 through
30 2029, where the person owns or operates a ~~((b~~

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

34 ~~(ii) Railroad)~~ railroad company, as that term is defined in RCW
35 81.04.010, and the railroad company's emissions equal or exceed
36 25,000 metric tons of carbon dioxide equivalent.

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

39 ~~(i) Capture at least 75 percent of the landfill gas generated by
40 the decomposition of waste using methods under 40 C.F.R. Part 98,~~

1 ~~Subpart HH - Municipal Solid Waste landfills, and subsequent updates,~~
2 ~~and~~

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

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

10 (4) When a covered entity reports, during a compliance period,
11 emissions from a facility under RCW 70A.15.2200 that are below the
12 thresholds specified in subsection (1) or (2) of this section, the
13 covered entity continues to have a compliance obligation through the
14 current compliance period. When a covered entity reports emissions
15 below the threshold for each year during an entire compliance period,
16 or has ceased all processes at the facility requiring reporting under
17 RCW 70A.15.2200, the entity is no longer a covered entity as of the
18 beginning of the subsequent compliance period unless the department
19 provides notice at least 12 months before the end of the compliance
20 period that the facility's emissions were within 10 percent of the
21 threshold and that the person will continue to be designated as a
22 covered entity in order to ensure equity among all covered entities.
23 Whenever a covered entity ceases to be a covered entity, the
24 department shall notify the appropriate policy and fiscal committees
25 of the legislature of the name of the entity and the reason the
26 entity is no longer a covered entity.

27 (5) For types of emission sources described in subsection (1) of
28 this section that begin or modify operation after January 1, 2023,
29 and types of emission sources described in subsection (2) of this
30 section that begin or modify operation after 2027, coverage under the
31 program starts in the calendar year in which emissions from the
32 source exceed the applicable thresholds in subsection (1) or (2) of
33 this section, or upon formal notice from the department that the
34 source is expected to exceed the applicable emissions threshold,
35 whichever happens first. Sources meeting these conditions are
36 required to transfer their first allowances on the first transfer
37 deadline of the year following the year in which their emissions were
38 equal to or exceeded the emissions threshold.

39 (6) For emission sources described in subsection (1) of this
40 section that are in operation or otherwise active between 2015 and

1 2019 but were not required to report emissions for those years under
2 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
3 coverage under the program starts in the calendar year following the
4 year in which emissions from the source exceed the applicable
5 thresholds in subsection (1) of this section as reported pursuant to
6 RCW 70A.15.2200 or provided as required by this chapter, or upon
7 formal notice from the department that the source is expected to
8 exceed the applicable emissions threshold for the first year that
9 source is required to report emissions, whichever happens first.
10 Sources meeting these criteria are required to transfer their first
11 allowances on the first transfer deadline of the year following the
12 year in which their emissions, as reported under RCW 70A.15.2200 or
13 provided as required by this chapter, were equal to or exceeded the
14 emissions threshold.

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

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

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

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

24 (d) Carbon dioxide emissions from the combustion of biomass or
25 biofuels;

26 (e)(i) Motor vehicle fuel or special fuel that is used
27 exclusively for agricultural purposes by a farm fuel user. This
28 exemption is available only if a buyer of motor vehicle fuel or
29 special fuel provides the seller with an exemption certificate in a
30 form and manner prescribed by the department. For the purposes of
31 this subsection, "agricultural purposes" and "farm fuel user" have
32 the same meanings as provided in RCW 82.08.865.

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

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

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

4 (8) The department shall not require multiple covered entities to
5 have a compliance obligation for the same emissions. The department
6 may by rule authorize refineries, fuel suppliers, facilities using
7 natural gas, and natural gas utilities to provide by agreement for
8 the assumption of the compliance obligation for fuel or natural gas
9 supplied and combusted in the state. The department must be notified
10 of such an agreement at least 12 months prior to the compliance
11 obligation period for which the agreement is applicable.

12 (9) (a) The legislature intends to promote a growing and
13 sustainable economy and to avoid leakage of emissions from
14 manufacturing to other locations. The legislature further intends to
15 see innovative new businesses locate and grow in Washington that
16 contribute to Washington's prosperity and environmental objectives.

17 (b) Consistent with the intent of the legislature to avoid the
18 leakage of emissions to other jurisdictions, in achieving the state's
19 greenhouse gas limits in RCW 70A.45.020, the state, including lead
20 agencies under chapter 43.21C RCW, shall pursue the limits in a
21 manner that recognizes that the siting and placement of new or
22 expanded best-in-class facilities with lower carbon emitting
23 processes is in the economic and environmental interests of the state
24 of Washington.

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

33 (d) Covered emissions from an entity that is or will be a covered
34 entity under this chapter may not be the basis for denial of a permit
35 for a new or expanded facility. Covered emissions must be included in
36 the analysis undertaken pursuant to (c) of this subsection. Nothing
37 in this subsection requires a lead agency or a permitting agency to
38 approve or issue a permit to a permit applicant, including to a new
39 or expanded fossil fuel project.

1 (e) A lead agency under chapter 43.21C RCW or a permitting agency
2 shall allow a new or expanded facility that is a covered entity or
3 opt-in entity to satisfy a mitigation requirement for its covered
4 emissions under chapter 316, Laws of 2021 and under any greenhouse
5 gas emission mitigation requirements for covered emissions under
6 chapter 43.21C RCW by submitting to the department the number of
7 compliance instruments equivalent to its covered emissions during a
8 compliance period.

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

11 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
12 43.05.150, and in addition to or as an alternate to any other penalty
13 provided by law, any person who violates any of the provisions of
14 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~or 70A.60~~) 70A.535
15 ((RCW)), or 70A.--- RCW (the new chapter created in section 17 of
16 this act), RCW 76.04.205, or any of the rules in force under such
17 chapters or section may incur a civil penalty in an amount not to
18 exceed ten thousand dollars per day for each violation. Each such
19 violation shall be a separate and distinct offense, and in case of a
20 continuing violation, each day's continuance shall be a separate and
21 distinct violation. Enforcement actions related to violations of RCW
22 76.04.205 must be consistent with the provisions of RCW 76.04.205.

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

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

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

36 (3) Each act of commission or omission which procures, aids or
37 abets in the violation shall be considered a violation under the
38 provisions of this section and subject to the same penalty. The

1 penalties provided in this section shall be imposed pursuant to RCW
2 43.21B.300.

3 (4) (a) Except as provided in (b) of this subsection, all
4 penalties recovered under this section by the department or the
5 department of natural resources shall be paid into the state treasury
6 and credited to the air pollution control account established in RCW
7 70A.15.1010 or, if recovered by the authority, shall be paid into the
8 treasury of the authority and credited to its funds. If a prior
9 penalty for the same violation has been paid to a local authority,
10 the penalty imposed by the department under subsection (1) of this
11 section shall be reduced by the amount of the payment.

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

15 (5) To secure the penalty incurred under this section, the state
16 or the authority shall have a lien on any vessel used or operated in
17 violation of this chapter which shall be enforced as provided in RCW
18 60.36.050.

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

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

28 (8) The department shall develop rules for excusing excess
29 emissions from enforcement action if such excess emissions are
30 unavoidable. The rules shall specify the criteria and procedures for
31 the department and local air authorities to determine whether a
32 period of excess emissions is excusable in accordance with the state
33 implementation plan.

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

36 (1) The air pollution control account is established in the state
37 treasury. All receipts collected by or on behalf of the department
38 from RCW 70A.15.2200(2), and receipts from nonpermit program sources
39 under RCW 70A.15.2210(1) and 70A.15.2230(7), and all receipts from

1 RCW 70A.15.5090 (~~and~~), 70A.15.5120, and section 13 of this act
2 shall be deposited into the account. Moneys in the account may be
3 spent only after appropriation. Expenditures from the account may be
4 used only to develop and implement the provisions of this chapter,
5 chapters 70A.25 and 70A.--- (the new chapter created in section 17 of
6 this act) RCW, and RCW 70A.60.060.

7 (2) The amounts collected and allocated in accordance with this
8 section shall be expended upon appropriation except as otherwise
9 provided in this section and in accordance with the following
10 limitations:

11 Portions of moneys received by the department of ecology from the
12 air pollution control account shall be distributed by the department
13 to local authorities based on:

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

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

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

21 (3) The air operating permit account is created in the custody of
22 the state treasurer. All receipts collected by or on behalf of the
23 department from permit program sources under RCW 70A.15.2210(1),
24 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into
25 the account. Expenditures from the account may be used only for the
26 activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270,
27 and 70A.15.2230(7). Moneys in the account may be spent only after
28 appropriation.

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

31 NEW SECTION. **Sec. 18.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

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