
HOUSE BILL 1663

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By Representatives Duerr, Fitzgibbon, Ryu, Berry, Leavitt, Ramel, Thai, Walen, Valdez, Goodman, Gregerson, Macri, Peterson, Slatter, Tharinger, Kloba, Pollet, Harris-Talley, and Hackney

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

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

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

8 (1) "Active limited purpose landfill" means a limited purpose
9 landfill that has accepted or is accepting solid waste for disposal
10 and has not been closed in accordance with the requirements set forth
11 in chapter 173-350 WAC as those requirements existed on January 10,
12 2022.

13 (2) "Active municipal solid waste landfill" means a municipal
14 solid waste landfill that has accepted or is accepting solid waste
15 for disposal and has not been closed in accordance with the
16 requirements set forth in WAC 173-351-500 as it existed on January
17 10, 2022.

18 (3) "Air pollution" is presence in the outdoor atmosphere of one
19 or more air contaminants in sufficient quantities and of such
20 characteristics and duration as is, or is likely to be, injurious to
21 human health, plant or animal life, or property, or which

1 unreasonably interfere with enjoyment of life and property. For the
2 purpose of this chapter, air pollution does not include air
3 contaminants emitted in compliance with chapter 17.21 RCW.

4 (4) "Ambient air" means the surrounding outside air.

5 (5) "Authority" means any air pollution control agency whose
6 jurisdictional boundaries are coextensive with the boundaries of one
7 or more counties.

8 (6) "Closed limited purpose landfill" means a limited purpose
9 landfill that is no longer accepting solid waste for disposal and has
10 been closed in accordance with the requirements set forth in chapter
11 173-350 WAC as those requirements existed on January 10, 2022.

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

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

17 (9) "Emission" means a release of air contaminants into the
18 ambient air.

19 (10) "Gas collection system" means any system that employs
20 various gas collection wells and connected piping, and mechanical
21 blowers, fans, pumps, or compressors to create a pressure gradient
22 and actively extract landfill gas.

23 (11) "Gas control device" means any device used to dispose of or
24 treat collected landfill gas including, but not limited to, enclosed
25 flares, internal combustion engines, boilers and boiler-to-steam
26 turbine systems, fuel cells, and gas turbines.

27 (12) "Gas control system" means any system that disposes of or
28 treats collected landfill gas by one or more of the following means:
29 Combustion; gas treatment for subsequent sale, or sale for processing
30 offsite, including for transportation fuel and injection into a
31 natural gas pipeline.

32 (13) "Limited purpose landfill" means a landfill that is not an
33 inert waste landfill and receives or has received only solid wastes
34 that are designated as nonhazardous and that are not municipal solid
35 wastes.

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

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

4 NEW SECTION. **Sec. 2.** (1) This chapter applies to all municipal
5 solid waste landfills and limited purpose landfills that received
6 solid waste after January 1, 1977, except as provided in subsection
7 (2) of this section.

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

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

12 (b) Landfills that receive only inert waste or nondecomposable
13 wastes.

14 (3) The department must adopt rules to implement this chapter.
15 The rules adopted by the department must be informed by landfill
16 methane regulations adopted by the California air resources board,
17 the Oregon environmental quality commission, and the United States
18 environmental protection agency.

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

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

29 (b) The waste in place report must be submitted annually until
30 either:

31 (i) The municipal solid waste landfill or limited purpose
32 landfill reaches a size greater than or equal to 450,000 tons of
33 waste in place; or

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

36 (2) Each owner or operator of a municipal solid waste landfill or
37 limited purpose landfill having greater than or equal to 450,000 tons
38 of waste in place must calculate the landfill gas heat input capacity

1 pursuant to section 8 of this act and the department's implementing
2 rules and must submit a landfill gas heat input capacity report to
3 the department or local authority.

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

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

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

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

16 (B) If the municipal solid waste landfill or limited purpose
17 landfill is active, the owner or operator submits a closure
18 notification pursuant to section 7 of this act.

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

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

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

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

36 (B) If there is no measured concentration of methane of 200 parts
37 per million by volume or greater from the surface of an active
38 municipal solid waste landfill or limited purpose landfill,
39 recalculate the landfill gas heat input capacity annually as required
40 in (a) of this subsection until such time that the owner or operator

1 submits a closure notification pursuant to section 7 of this act and
2 the department's implementing rules adopted pursuant to section 2 of
3 this act; or

4 (C) If there is no measured concentration of methane of 200 parts
5 per million by volume or greater from the surface of a closed or
6 inactive municipal solid waste landfill or limited purpose landfill,
7 the requirements of this chapter and the department's implementing
8 rules adopted pursuant to section 2 of this act no longer apply,
9 provided that the following information is submitted to and approved
10 by the department or local authority:

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

14 (II) All instantaneous surface monitoring records.

15 NEW SECTION. **Sec. 4.** (1) The owner or operator of any municipal
16 solid waste landfill or limited purpose landfill that has a
17 calculated landfill gas heat input capacity greater than or equal to
18 3,000,000 British thermal units per hour recovered must install a gas
19 collection and control system that meets the requirements of this
20 section and the department's implementing rules adopted pursuant to
21 section 2 of this act, unless the owner or operator demonstrates to
22 the satisfaction of the department or local authority that after four
23 consecutive quarterly monitoring periods there is no measured
24 concentration of methane of 200 parts per million by volume or
25 greater using the instantaneous surface monitoring procedures
26 specified in section 8 of this act and the department's implementing
27 rules adopted pursuant to section 2 of this act.

28 (2) The gas collection and control system must handle the
29 expected gas generation flow rate from the entire area of the
30 municipal solid waste landfill or limited purpose landfill and must
31 collect gas at an extraction rate to comply with the surface methane
32 emission limits set forth in section 5 of this act and the
33 department's implementing rules.

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

1 (4) The gas collection and control system, if it uses a flare,
2 must use either an enclosed flare or, if the system uses an open
3 flare, the open flare must comply with the following requirements:

4 (a) The open flare must meet the requirements of 40 C.F.R. Sec.
5 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

6 (b) An open flare installed and operating prior to August 1,
7 2022, may operate until January 1, 2032, unless the owner or operator
8 demonstrates to the satisfaction of the department or local authority
9 that the landfill gas heat input capacity is less than 3,000,000
10 British thermal units per hour pursuant to section 8 of this act and
11 the department's implementing rules adopted pursuant to section 2 of
12 this act and is insufficient to support the continuous operation of
13 an enclosed flare or other gas control device; and

14 (c) The owner or operator may temporarily operate an open flare
15 during the repair or maintenance of the gas control system, or while
16 awaiting the installation of an enclosed flare, or to address offsite
17 gas migration issues. Any owner or operator seeking to temporarily
18 operate an open flare must submit a written request to the department
19 or local authority pursuant to section 10 of this act and the
20 department's implementing rules adopted pursuant to section 2 of this
21 act.

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

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

29 (a) The device or devices must achieve a methane destruction
30 efficiency of at least 99 percent by weight; and

31 (b) If a boiler or a process heater is used as the gas control
32 device, the landfill gas stream must be introduced into the flame
33 zone, except that where the landfill gas is not the primary fuel for
34 the boiler or process heater, introduction of the landfill gas stream
35 into the flame zone is not required.

36 (7) The owner or operator of a municipal solid waste landfill or
37 limited purpose landfill must conduct an annual source test for any
38 gas control device or devices subject to this section using the test
39 methods identified in section 8 of this act and the department's
40 implementing rules adopted pursuant to section 2 of this act.

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

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

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

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

17 (a) The working face of the landfill;

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

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

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

33 (2) The owner or operator of a municipal solid waste landfill or
34 limited purpose landfill with a gas collection and control system
35 must monitor the gas control system according to the requirements
36 specified in implementing rules adopted by the department pursuant to
37 section 2 of this act.

38 (3) The owner or operator of a municipal solid waste landfill or
39 limited purpose landfill with a gas collection and control system

1 must monitor each individual wellhead to determine the gauge pressure
2 according to the requirements specified in implementing rules adopted
3 by the department pursuant to section 2 of this act.

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

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

16 (3) The owner or operator of a municipal solid waste landfill or
17 limited purpose landfill that ceases to accept waste must submit a
18 closure notification to the department or local authority within 30
19 days of ceasing to accept waste.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 13.** The department and local authorities may
12 assess and collect such fees as may be necessary to recover the
13 direct and indirect costs associated with the implementation of this
14 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (g) Emissions from municipal solid waste landfills and limited
19 purpose landfills that are subject to, and in compliance with,
20 chapter 70A.--- RCW (the new chapter created in section 16 of this
21 act).

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

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

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

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

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

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

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

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

28 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
29 43.05.150, and in addition to or as an alternate to any other penalty
30 provided by law, any person who violates any of the provisions of
31 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~or 70A.60~~) 70A.535
32 (~~RCW~~), or 70A.--- RCW (the new chapter created in section 16 of
33 this act), RCW 76.04.205, or any of the rules in force under such
34 chapters or section may incur a civil penalty in an amount not to
35 exceed ten thousand dollars per day for each violation. Each such
36 violation shall be a separate and distinct offense, and in case of a
37 continuing violation, each day's continuance shall be a separate and
38 distinct violation. Enforcement actions related to violations of RCW
39 76.04.205 must be consistent with the provisions of RCW 76.04.205.

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

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

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

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

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 16.** Sections 1 through 13 of this act
11 constitute a new chapter in Title 70A RCW.

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

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