

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1663

67th Legislature
2022 Regular Session

Passed by the House March 9, 2022
Yeas 58 Nays 38

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2022
Yeas 30 Nays 17

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1663** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1663

AS AMENDED BY THE SENATE

Passed Legislature - 2022 Regular Session

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, 70A.15.1010, and 70A.65.260; reenacting and
3 amending RCW 70A.15.3160; adding a new chapter to Title 70A RCW; and
4 prescribing 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. If a municipal solid waste landfill partners with a third
14 party to operate all or a portion of the gas collection and control
15 system or energy recovery device, the obligation to comply with the
16 requirements of this chapter are the responsibility of the owner or
17 operator of the relevant portion of the gas collection and control
18 system or energy recovery device.

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 December 31,
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 owner or operator of
17 the energy recovery device or devices must comply with the following
18 requirements:

19 (a) The device or devices must achieve a methane destruction
20 efficiency of at least 97 percent by weight, except for lean-burn
21 internal combustion engines that were installed and operating prior
22 to January 1, 2022, which must reduce the outlet methane
23 concentration to less than 3,000 parts per million by volume, dry
24 basis corrected to 15 percent oxygen; and

25 (b) If a boiler or a process heater is used as the gas control
26 device, the landfill gas stream must be introduced into the flame
27 zone, except that where the landfill gas is not the primary fuel for
28 the boiler or process heater, introduction of the landfill gas stream
29 into the flame zone is not required.

30 (7) If a gas collection and control system routes the collected
31 gas to a treatment system that processes the collected gas for
32 subsequent sale or use, the owner or operator of the treatment system
33 must ensure the system achieves a methane leak rate of three percent
34 or less by weight. Venting of processed landfill gas to the ambient
35 air is not allowed. If the processed landfill gas cannot be routed
36 for subsequent sale or use, then the treated landfill gas must be
37 controlled according to subsection (4) of this section.

38 (8) The owner or operator of a municipal solid waste landfill
39 must conduct a source test for any gas control device or devices
40 subject to this section using the test methods identified in section

1 8 of this act and the department's implementing rules adopted
2 pursuant to section 2 of this act. If a gas control device is
3 currently in compliance with source testing requirements as of the
4 effective date of this section, the owner or operator must conduct
5 the source test no less frequently than once every five years. If a
6 gas control device is currently not in compliance with source testing
7 requirements as of the effective date of this section, or if a
8 subsequent source test shows the gas control device is out of
9 compliance, the owner or operator must conduct the source test no
10 less frequently than once per year until two subsequent consecutive
11 tests both show compliance. Upon two subsequent consecutive compliant
12 tests, the owner or operator may return to conducting the source test
13 no less frequently than once every five years.

14 NEW SECTION. **Sec. 5.** (1) Except as provided in section 4 of
15 this act, beginning January 1st of the year following the year in
16 which the department adopts rules to implement this chapter, or upon
17 commencing operation of a newly installed gas collection and control
18 system or modification of an existing gas collection and control
19 system pursuant to section 4 of this act, whichever is later, and
20 except as provided by the department to accommodate significant
21 technological improvements, which may include the installation of an
22 energy recovery device or devices, not to exceed 24 months after the
23 department adopts rules to implement this chapter, no location on a
24 municipal solid waste landfill surface may exceed the following
25 methane concentration limits, dependent upon whether the owner or
26 operator of the municipal solid waste landfills conducts, pursuant to
27 section 6 of this act, instantaneous surface emissions monitoring or
28 integrated surface emissions monitoring:

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

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

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

38 (a) The owner or operator must record the date, location, and
39 value of each exceedance, along with retest dates and results. The

1 location of each exceedance must be clearly marked and identified on
2 a topographic map of the municipal solid waste landfill, drawn to
3 scale, with the location of both the monitoring grids and the gas
4 collection system clearly identified; and

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

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

11 (a) The working face of the landfill;

12 (b) Areas of the landfill surface where the landfill cover
13 material has been removed for the purpose of installing, expanding,
14 replacing, or repairing components of the landfill cover system, the
15 landfill gas collection and control system, the leachate collection
16 and removal system, or a landfill gas condensate collection and
17 removal system;

18 (c) Areas of the landfill surface where the landfill cover
19 material has been removed for law enforcement activities requiring
20 excavation; or

21 (d) Areas of the landfill in which the landfill owner or
22 operator, or a designee of the owner or operator, is engaged in
23 active mining for minerals or metals.

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

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

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

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

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

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

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

21 (5) The owner or operator of either an active municipal solid
22 waste landfill with 450,000 or more tons of waste in place or a
23 closed municipal solid waste landfill with 750,000 or more tons of
24 waste in place must prepare an annual report for the period of
25 January 1st through December 31st of each year. The annual report
26 must include a calculation of landfill gas heat input capacity. Each
27 annual report must be submitted to the department and local authority
28 during the subsequent calendar year, with the date of submission to
29 be established through rules adopted by the department.

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

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

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

4 (3) The owner or operator of a municipal solid waste landfill
5 must measure the landfill surface concentration of methane using a
6 hydrocarbon detector meeting the requirements of this section and the
7 department's implementing rules adopted pursuant to section 2 of this
8 act.

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

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

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

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

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

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

28 (a) The gas collection and control system was in operation for at
29 least 15 years, unless the owner or operator demonstrates to the
30 satisfaction of the department or local authority that due to
31 declining methane rates, the municipal solid waste landfill will be
32 unable to operate the gas collection and control system for a 15 year
33 period;

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

36 (c) The owner or operator submits an equipment removal report to
37 the department or local authority pursuant to section 7 of this act
38 and the department's implementing rules adopted pursuant to section 2
39 of this act.

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

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

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

21 (3) The department must review the requested alternatives and
22 either approve or disapprove the alternatives within 120 days. The
23 department may request that additional information be submitted as
24 part of the review of the requested alternatives.

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

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

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

1 NEW SECTION. **Sec. 12.** Any person who violates this chapter or
2 any rules that implement this chapter may incur a civil penalty
3 pursuant to RCW 70A.15.3160. The department shall waive penalties in
4 the event the owner or operator of the landfill is actively taking
5 corrective actions to control any methane exceedances. Penalties
6 collected under this section must be deposited into the air pollution
7 control account created in RCW 70A.15.1010 and may only be used to
8 implement chapter 70A.--- RCW (the new chapter created in section 18
9 of this act).

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

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

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

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

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

31 (c) Where the person is a first jurisdictional deliverer
32 importing electricity into the state and the cumulative annual total
33 of emissions associated with the imported electricity, whether from
34 specified or unspecified sources, exceeds 25,000 metric tons of
35 carbon dioxide equivalent. In consultation with any linked
36 jurisdiction to the program created by this chapter, by October 1,
37 2026, the department, in consultation with the department of commerce
38 and the utilities and transportation commission, shall adopt by rule

1 a methodology for addressing imported electricity associated with a
2 centralized electricity market;

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

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

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

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

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

1 (3) ~~((a))~~ A person is a covered entity beginning January 1,
2 2031, and all subsequent compliance periods if the person reported
3 emissions under RCW 70A.15.2200 or provided emissions data as
4 required by this chapter for any calendar year from 2027 through
5 2029, where the person owns or operates a ~~((~~

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

9 ~~(ii) Railroad)~~ railroad company, as that term is defined in RCW
10 81.04.010, and the railroad company's emissions equal or exceed
11 25,000 metric tons of carbon dioxide equivalent.

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

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

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

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

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

1 of the legislature of the name of the entity and the reason the
2 entity is no longer a covered entity.

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

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

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

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

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

37 (c) Emissions from a coal-fired electric generation facility
38 exempted from additional greenhouse gas limitations, requirements, or
39 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 that are
19 subject to, and in compliance with, chapter 70A.--- RCW (the new
20 chapter created in section 18 of this act).

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

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

34 (b) Consistent with the intent of the legislature to avoid the
35 leakage of emissions to other jurisdictions, in achieving the state's
36 greenhouse gas limits in RCW 70A.45.020, the state, including lead
37 agencies under chapter 43.21C RCW, shall pursue the limits in a
38 manner that recognizes that the siting and placement of new or
39 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 18 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 **Sec. 16.** RCW 70A.15.1010 and 2021 c 315 s 13 are each amended to
11 read as follows:

12 (1) The air pollution control account is established in the state
13 treasury. All receipts collected by or on behalf of the department
14 from RCW 70A.15.2200(2), and receipts from nonpermit program sources
15 under RCW 70A.15.2210(1) and 70A.15.2230(7), and all receipts from
16 RCW 70A.15.5090 (~~and~~), 70A.15.5120, and section 12 of this act
17 shall be deposited into the account. Moneys in the account may be
18 spent only after appropriation. Expenditures from the account may be
19 used only to develop and implement the provisions of this chapter,
20 chapters 70A.25 and 70A.--- (the new chapter created in section 18 of
21 this act) RCW, and RCW 70A.60.060. Moneys collected under section 12
22 of this act may only be used to implement chapter 70A.--- RCW (the
23 new chapter created in section 18 of this act).

24 (2) The amounts collected and allocated in accordance with this
25 section shall be expended upon appropriation except as otherwise
26 provided in this section and in accordance with the following
27 limitations:

28 Portions of moneys received by the department of ecology from the
29 air pollution control account shall be distributed by the department
30 to local authorities based on:

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

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

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

38 (3) The air operating permit account is created in the custody of
39 the state treasurer. All receipts collected by or on behalf of the

1 department from permit program sources under RCW 70A.15.2210(1),
2 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into
3 the account. Expenditures from the account may be used only for the
4 activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270,
5 and 70A.15.2230(7). Moneys in the account may be spent only after
6 appropriation.

7 **Sec. 17.** RCW 70A.65.260 and 2021 c 316 s 29 are each amended to
8 read as follows:

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

16 (a) Implementing the working families tax rebate in RCW
17 82.08.0206;

18 (b) Supplementing the growth management planning and
19 environmental review fund established in RCW 36.70A.490 for the
20 purpose of making grants or loans to local governments for the
21 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and
22 36.70A.600, for costs associated with RCW 36.70A.610, and to cover
23 costs associated with the adoption of optional elements of
24 comprehensive plans consistent with RCW 43.21C.420;

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

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

35 (e) Programs, activities, or projects that increase the energy
36 efficiency or reduce greenhouse gas emissions of industrial
37 facilities including, but not limited to, proposals to implement
38 combined heat and power, district energy, or on-site renewables, such
39 as solar and wind power, to upgrade the energy efficiency of existing

1 equipment, to reduce process emissions, and to switch to less
2 emissions intensive fuel sources;

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

6 (i) Fertilizer management;

7 (ii) Soil management;

8 (iii) Bioenergy;

9 (iv) Biofuels;

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

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

17 (vii) Renewable energy projects;

18 (viii) Farmworker housing weatherization programs;

19 (ix) Dairy digester research and development;

20 (x) Alternative manure management; and

21 (xi) Eligible fund uses under RCW 89.08.615;

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

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

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

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

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

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

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

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

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

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

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

36 (k) Programs, activities, or projects that reduce emissions from
37 landfills and waste-to-energy facilities through diversion of organic
38 materials, methane capture or conversion strategies, (~~or other~~
39 ~~means~~) installation of gas collection devices and gas control
40 systems, monitoring and reporting of methane emissions, or other

1 means, prioritizing funding needed for any activities by local
2 governments to comply with chapter 70A.--- RCW (the new chapter
3 created in section 18 of this act);

4 (1) Carbon dioxide removal projects, programs, and activities;
5 and

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

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

19 NEW SECTION. Sec. 18. Sections 1 through 13 of this act
20 constitute a new chapter in Title 70A RCW.

21 NEW SECTION. Sec. 19. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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