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**SUBSTITUTE SENATE BILL 5022**

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

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

AN ACT Relating to expanded polystyrene prohibitions, optional food serviceware, and recycled content for beverage containers; amending RCW 43.21B.300; reenacting and amending RCW 43.21B.110; adding a new chapter to Title 70A RCW; creating a new section; and prescribing penalties.

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

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

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

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

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

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine;

(d) Distilled spirits;

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

(f) Any beverage other than those specified in this subsection, except infant formula.

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

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

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

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

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

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

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

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

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

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

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

(c) Bladders or pouches that contain wine.

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

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

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

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

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

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

(2)(a) On or before April 1, 2022, and annually thereafter, beverage manufacturers must register with the department individually or through a third-party representative registering on behalf of a group of beverage manufacturers.

(b) After January 1, 2023, a beverage manufacturer not registered with the department either individually or through a third party may not sell or supply beverage containers in or into Washington state.

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

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

(ii) The department must:

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

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

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

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

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

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

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

(b) For dairy milk:

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

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

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

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

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

(ii) Recycling rates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Anomalous market conditions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Utensils;

(ii) Straws;

(iii) Condiment packaging; and

(iv) Beverage cup lids.

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

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

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

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

(i) Hot beverages;

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

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

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

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

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

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

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

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

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

(2) To assist with the requirements specified under sections 6 and 7 of this act, the department:

(a) Must prepare and post on its website information regarding the prohibitions on the sale and distribution of expanded polystyrene products as specified under section 6 of this act and optional serviceware under section 7 of this act;

(b) For education and outreach to help implement sections 6 and 7 of this act, may develop culturally appropriate and translated educational materials and resources for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states.

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

NEW SECTION. **Sec.**  RECYCLING ENHANCEMENT FEE ACCOUNT. The recycling enhancement fee account is created in the state treasury. All fees collected by the department pursuant to section 5 of this act must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for providing funding to the recycling development center created in RCW 70A.240.030 for the purpose of furthering the development of recycling infrastructure in this state.

NEW SECTION. **Sec.**  RECYCLED CONTENT ACCOUNT. The recycled content account is created in the custody of the state treasury. All receipts received by the department under section 3 of this act must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for implementing, administering, and enforcing the requirements of sections 3 through 5 of this act.

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

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

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

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

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

**Sec.**  RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, sections 6 and 7 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, section 3 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions of the department of ecology that are appealable under sections 3 and 5 of this act, to assess fees and to set recycled minimum postconsumer content for plastic beverage containers.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

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

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, sections 6 and 7 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  Sections 2 through 11 of this act constitute a new chapter in Title 70A RCW.

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

**--- END ---**