

E2SHB 1663 - S COMM AMD

By Committee on Environment, Energy & Technology

OUT OF ORDER 03/04/2022

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

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

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

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

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

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

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

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

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

29 (8) "Gas collection system" means any system that employs various
30 gas collection wells and connected piping, and mechanical blowers,

1 fans, pumps, or compressors to create a pressure gradient and
2 actively extract landfill gas.

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

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

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

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

18 NEW SECTION. **Sec. 2.** (1) This chapter applies to all municipal
19 solid waste landfills that received solid waste after January 1,
20 1992, except as provided in subsection (2) of this section.

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

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

25 (b) Landfills that receive only inert waste or nondecomposable
26 wastes.

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

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

36 (a) The waste in place report must be prepared for the period of
37 January 1st through December 31st of each year. The report must be
38 submitted to the department or local authority during the subsequent

1 calendar year, with the date of submission to be established by rule
2 as adopted by the department.

3 (b) The waste in place report must be submitted annually until
4 either:

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

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

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

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

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

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

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

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

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

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

36 (ii) Demonstrate to the satisfaction of the department or local
37 authority that after four consecutive quarterly monitoring periods
38 there is no measured concentration of methane of 200 parts per
39 million by volume or greater using the instantaneous surface
40 monitoring procedures specified in section 8 of this act and the

1 department's implementing rules. Based on the monitoring results, the
2 owner or operator must do one of the following:

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

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

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

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

25 (II) All instantaneous surface monitoring records.

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

1 collection and control system, but the obligation to comply with the
2 requirements of this chapter, and the liability for civil penalties
3 issued pursuant to this chapter, remain the responsibility of the
4 owner or operator of the municipal solid waste landfill.

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

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

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

19 (a) The open flare must meet the requirements of 40 C.F.R. Sec.
20 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

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

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

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

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

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

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

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

23 (8) The owner or operator of a municipal solid waste landfill
24 must conduct a source test for any gas control device or devices
25 subject to this section using the test methods identified in section
26 8 of this act and the department's implementing rules adopted
27 pursuant to section 2 of this act. If a gas control device is
28 currently in compliance with source testing requirements as of the
29 effective date of this section, the owner or operator must conduct
30 the source test no less frequently than once every five years. If a
31 gas control device is currently not in compliance with source testing
32 requirements as of the effective date of this section, or if a
33 subsequent source test shows the gas control device is out of
34 compliance, the owner or operator must conduct the source test no
35 less frequently than once per year until two subsequent consecutive
36 tests both show compliance. Upon two subsequent consecutive compliant
37 tests, the owner or operator may return to conducting the source test
38 no less frequently than once every five years.

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, and
7 except as provided by the department to accommodate significant
8 technological improvements not to exceed 24 months after the
9 department adopts rules to implement this chapter, no location on a
10 municipal solid waste landfill surface may exceed the following
11 methane concentration limits, dependent upon whether the owner or
12 operator of the municipal solid waste landfills conducts, pursuant to
13 section 6 of this act, instantaneous surface emissions monitoring or
14 integrated surface emissions monitoring:

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

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

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

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

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

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

36 (a) The working face of the landfill;

37 (b) Areas of the landfill surface where the landfill cover
38 material has been removed for the purpose of installing, expanding,
39 replacing, or repairing components of the landfill cover system, the
40 landfill gas collection and control system, the leachate collection

1 and removal system, or a landfill gas condensate collection and
2 removal system;

3 (c) Areas of the landfill surface where the landfill cover
4 material has been removed for law enforcement activities requiring
5 excavation; or

6 (d) Areas of the landfill in which the landfill owner or
7 operator, or a designee of the owner or operator, is engaged in
8 active mining for minerals or metals.

9 NEW SECTION. **Sec. 6.** (1) The owner or operator of a municipal
10 solid waste landfill with a gas collection and control system must
11 conduct instantaneous or integrated surface monitoring of the
12 landfill surface according to the requirements specified in
13 implementing rules adopted by the department pursuant to section 2 of
14 this act.

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

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

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

28 (2) The owner or operator of a municipal solid waste landfill
29 must maintain records related to monitoring, testing, landfill
30 operations, and the operation of the gas control device, gas
31 collection system, and gas control system. The records must be
32 provided by the owner or operator to the department or local
33 authority within five business days of a request from the department
34 or local authority.

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

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

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

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

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

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

26 (3) The owner or operator of a municipal solid waste landfill
27 must measure the landfill surface concentration of methane using a
28 hydrocarbon detector meeting the requirements of this section and the
29 department's implementing rules adopted pursuant to section 2 of this
30 act.

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

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

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

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

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

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

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

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

21 (c) The owner or operator submits an equipment removal report to
22 the department or local authority pursuant to section 7 of this act
23 and the department's implementing rules adopted pursuant to section 2
24 of this act.

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

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

37 (2) The criteria that the department may use to evaluate
38 alternative compliance option requests include, but are not limited

1 to: Compliance history; documentation containing the landfill gas
2 flow rate and measured methane concentrations for individual gas
3 collection wells or components; permits; component testing and
4 surface monitoring results; gas collection and control system
5 operation, maintenance, and inspection records; and historical
6 meteorological data.

7 (3) The department must review the requested alternatives and
8 either approve or disapprove the alternatives within 120 days. The
9 department may request that additional information be submitted as
10 part of the review of the requested alternatives.

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

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

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

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

27 NEW SECTION. **Sec. 13.** The department and local authorities may
28 assess and collect such fees as may be necessary to recover the
29 direct and indirect costs associated with the implementation of this
30 chapter. Fees collected under this section must be deposited into the
31 air pollution control account created in RCW 70A.15.1010 and may only
32 be used to implement chapter 70A.--- RCW (the new chapter created in
33 section 18 of this act).

34 NEW SECTION. **Sec. 14.** The department of ecology shall:

35 (1) Undertake, in consultation with districts that monitor
36 methane, monitoring and measurements of high emission methane hot

1 spots in the state using the best available and cost-effective
2 scientific and technical methods, which may include monitoring and
3 mapping methane emissions using aircraft. The department may consult
4 with federal and state agencies, independent scientific experts, and
5 any other appropriate entities to gather or acquire the necessary
6 information; and

7 (2) Submit a report with the department's findings to the
8 legislature by January 1, 2025.

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

11 (1) A person is a covered entity as of the beginning of the first
12 compliance period and all subsequent compliance periods if the person
13 reported emissions under RCW 70A.15.2200 for any calendar year from
14 2015 through 2019, or if additional data provided as required by this
15 chapter indicates that emissions for any calendar year from 2015
16 through 2019 equaled or exceeded any of the following thresholds, or
17 if the person is a first jurisdictional deliverer and imports
18 electricity into the state during the compliance period:

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

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

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

36 (d) Where the person is a supplier of fossil fuel other than
37 natural gas and from that fuel 25,000 metric tons or more of carbon
38 dioxide equivalent emissions would result from the full combustion or
39 oxidation, excluding the amounts for fuel products that are produced

1 or imported with a documented final point of delivery outside of
2 Washington and combusted outside of Washington; and

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

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

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

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

34 (3) ~~((a))~~ A person is a covered entity beginning January 1,
35 2031, and all subsequent compliance periods if the person reported
36 emissions under RCW 70A.15.2200 or provided emissions data as
37 required by this chapter for any calendar year from 2027 through
38 2029, where the person owns or operates a ~~((a))~~

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

4 ~~(ii) Railroad) railroad company, as that term is defined in RCW~~
5 ~~81.04.010, and the railroad company's emissions equal or exceed~~
6 ~~25,000 metric tons of carbon dioxide equivalent.~~

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

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

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

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

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

37 (5) For types of emission sources described in subsection (1) of
38 this section that begin or modify operation after January 1, 2023,
39 and types of emission sources described in subsection (2) of this
40 section that begin or modify operation after 2027, coverage under the

1 program starts in the calendar year in which emissions from the
2 source exceed the applicable thresholds in subsection (1) or (2) of
3 this section, or upon formal notice from the department that the
4 source is expected to exceed the applicable emissions threshold,
5 whichever happens first. Sources meeting these conditions are
6 required to transfer their first allowances on the first transfer
7 deadline of the year following the year in which their emissions were
8 equal to or exceeded the emissions threshold.

9 (6) For emission sources described in subsection (1) of this
10 section that are in operation or otherwise active between 2015 and
11 2019 but were not required to report emissions for those years under
12 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
13 coverage under the program starts in the calendar year following the
14 year in which emissions from the source exceed the applicable
15 thresholds in subsection (1) of this section as reported pursuant to
16 RCW 70A.15.2200 or provided as required by this chapter, or upon
17 formal notice from the department that the source is expected to
18 exceed the applicable emissions threshold for the first year that
19 source is required to report emissions, whichever happens first.
20 Sources meeting these criteria are required to transfer their first
21 allowances on the first transfer deadline of the year following the
22 year in which their emissions, as reported under RCW 70A.15.2200 or
23 provided as required by this chapter, were equal to or exceeded the
24 emissions threshold.

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

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

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

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

34 (d) Carbon dioxide emissions from the combustion of biomass or
35 biofuels;

36 (e) (i) Motor vehicle fuel or special fuel that is used
37 exclusively for agricultural purposes by a farm fuel user. This
38 exemption is available only if a buyer of motor vehicle fuel or
39 special fuel provides the seller with an exemption certificate in a
40 form and manner prescribed by the department. For the purposes of

1 this subsection, "agricultural purposes" and "farm fuel user" have
2 the same meanings as provided in RCW 82.08.865.

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

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

11 (g) Emissions from municipal solid waste landfills that are
12 subject to, and in compliance with, chapter 70A.--- RCW (the new
13 chapter created in section 18 of this act).

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

22 (9)(a) The legislature intends to promote a growing and
23 sustainable economy and to avoid leakage of emissions from
24 manufacturing to other locations. The legislature further intends to
25 see innovative new businesses locate and grow in Washington that
26 contribute to Washington's prosperity and environmental objectives.

27 (b) Consistent with the intent of the legislature to avoid the
28 leakage of emissions to other jurisdictions, in achieving the state's
29 greenhouse gas limits in RCW 70A.45.020, the state, including lead
30 agencies under chapter 43.21C RCW, shall pursue the limits in a
31 manner that recognizes that the siting and placement of new or
32 expanded best-in-class facilities with lower carbon emitting
33 processes is in the economic and environmental interests of the state
34 of Washington.

35 (c) In conducting a life-cycle analysis, if required, for new or
36 expanded facilities that require review under chapter 43.21C RCW, a
37 lead agency must evaluate and attribute any potential net cumulative
38 greenhouse gas emissions resulting from the project as compared to
39 other existing facilities or best available technology including
40 best-in-class facilities and emerging lower carbon processes that

1 supply the same product or end use. The department may adopt rules to
2 determine the appropriate threshold for applying this analysis.

3 (d) Covered emissions from an entity that is or will be a covered
4 entity under this chapter may not be the basis for denial of a permit
5 for a new or expanded facility. Covered emissions must be included in
6 the analysis undertaken pursuant to (c) of this subsection. Nothing
7 in this subsection requires a lead agency or a permitting agency to
8 approve or issue a permit to a permit applicant, including to a new
9 or expanded fossil fuel project.

10 (e) A lead agency under chapter 43.21C RCW or a permitting agency
11 shall allow a new or expanded facility that is a covered entity or
12 opt-in entity to satisfy a mitigation requirement for its covered
13 emissions under chapter 316, Laws of 2021 and under any greenhouse
14 gas emission mitigation requirements for covered emissions under
15 chapter 43.21C RCW by submitting to the department the number of
16 compliance instruments equivalent to its covered emissions during a
17 compliance period.

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

20 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
21 43.05.150, and in addition to or as an alternate to any other penalty
22 provided by law, any person who violates any of the provisions of
23 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~or 70A.60~~) 70A.535
24 (~~(RCW)~~), or 70A.--- RCW (the new chapter created in section 18 of
25 this act), RCW 76.04.205, or any of the rules in force under such
26 chapters or section may incur a civil penalty in an amount not to
27 exceed ten thousand dollars per day for each violation. Each such
28 violation shall be a separate and distinct offense, and in case of a
29 continuing violation, each day's continuance shall be a separate and
30 distinct violation. Enforcement actions related to violations of RCW
31 76.04.205 must be consistent with the provisions of RCW 76.04.205.

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

36 (2)(a) Penalties incurred but not paid shall accrue interest,
37 beginning on the ninety-first day following the date that the penalty
38 becomes due and payable, at the highest rate allowed by RCW 19.52.020
39 on the date that the penalty becomes due and payable. If violations

1 or penalties are appealed, interest shall not begin to accrue until
2 the thirty-first day following final resolution of the appeal.

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

6 (3) Each act of commission or omission which procures, aids or
7 abets in the violation shall be considered a violation under the
8 provisions of this section and subject to the same penalty. The
9 penalties provided in this section shall be imposed pursuant to RCW
10 43.21B.300.

11 (4) (a) Except as provided in (b) of this subsection, all
12 penalties recovered under this section by the department or the
13 department of natural resources shall be paid into the state treasury
14 and credited to the air pollution control account established in RCW
15 70A.15.1010 or, if recovered by the authority, shall be paid into the
16 treasury of the authority and credited to its funds. If a prior
17 penalty for the same violation has been paid to a local authority,
18 the penalty imposed by the department under subsection (1) of this
19 section shall be reduced by the amount of the payment.

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

23 (5) To secure the penalty incurred under this section, the state
24 or the authority shall have a lien on any vessel used or operated in
25 violation of this chapter which shall be enforced as provided in RCW
26 60.36.050.

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

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

36 (8) The department shall develop rules for excusing excess
37 emissions from enforcement action if such excess emissions are
38 unavoidable. The rules shall specify the criteria and procedures for
39 the department and local air authorities to determine whether a

1 period of excess emissions is excusable in accordance with the state
2 implementation plan.

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

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

17 (2) The amounts collected and allocated in accordance with this
18 section shall be expended upon appropriation except as otherwise
19 provided in this section and in accordance with the following
20 limitations:

21 Portions of moneys received by the department of ecology from the
22 air pollution control account shall be distributed by the department
23 to local authorities based on:

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

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

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

31 (3) The air operating permit account is created in the custody of
32 the state treasurer. All receipts collected by or on behalf of the
33 department from permit program sources under RCW 70A.15.2210(1),
34 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into
35 the account. Expenditures from the account may be used only for the
36 activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270,
37 and 70A.15.2230(7). Moneys in the account may be spent only after
38 appropriation.

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

3 NEW SECTION. **Sec. 19.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected."

E2SHB 1663 - S COMM AMD

By Committee on Environment, Energy & Technology

OUT OF ORDER 03/04/2022

7 On page 1, line 1 of the title, after "landfills;" strike the
8 remainder of the title and insert "amending RCW 70A.65.080 and
9 70A.15.1010; reenacting and amending RCW 70A.15.3160; adding a new
10 chapter to Title 70A RCW; creating a new section; and prescribing
11 penalties."

EFFECT: Requires fines collected under this act to be used only for implementation of the act. Modifies the compliance requirements for lean-burn engines installed prior to January 1, 2022. Allows the Department of Ecology to provide exceptions to the compliance date for landfills that require significant technological improvements to comply with the requirements of this act. Requires the Department of Ecology to conduct a study to identify and measure emissions at methane hot spots in the state.

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