

**E2SHB 1663** - S COMM AMD  
By Committee on Ways & Means

**ADOPTED AS AMENDED 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,  
31 fans, pumps, or compressors to create a pressure gradient and  
32 actively extract landfill gas.

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

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

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

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

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

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

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

23 (b) Landfills that receive only inert waste or nondecomposable  
24 wastes.

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

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

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

1 (b) The waste in place report must be submitted annually until  
2 either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (II) All instantaneous surface monitoring records.

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

1 operator of the relevant portion of the gas collection and control  
2 system or energy recovery device.

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

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

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

17 (a) The open flare must meet the requirements of 40 C.F.R. Sec.  
18 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

19 (b) An open flare installed and operating prior to December 31,  
20 2022, may operate until January 1, 2032, unless the owner or operator  
21 demonstrates to the satisfaction of the department or local authority  
22 that the landfill gas heat input capacity is less than 3,000,000  
23 British thermal units per hour pursuant to section 8 of this act and  
24 the department's implementing rules adopted pursuant to section 2 of  
25 this act and is insufficient to support the continuous operation of  
26 an enclosed flare or other gas control device; and

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

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

39 (6) If a gas collection and control system routes the collected  
40 gas to an energy recovery device or devices, the owner or operator of

1 the energy recovery device or devices must comply with the following  
2 requirements:

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

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

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

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

38 NEW SECTION. **Sec. 5.** (1) Except as provided in section 4 of  
39 this act, beginning January 1st of the year following the year in

1 which the department adopts rules to implement this chapter, or upon  
2 commencing operation of a newly installed gas collection and control  
3 system or modification of an existing gas collection and control  
4 system pursuant to section 4 of this act, whichever is later, and  
5 except as provided by the department to accommodate significant  
6 technological improvements not to exceed 24 months after the  
7 department adopts rules to implement this chapter, no location on a  
8 municipal solid waste landfill surface may exceed the following  
9 methane concentration limits, dependent upon whether the owner or  
10 operator of the municipal solid waste landfills conducts, pursuant to  
11 section 6 of this act, instantaneous surface emissions monitoring or  
12 integrated surface emissions monitoring:

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

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

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

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

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

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

34 (a) The working face of the landfill;

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

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

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

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

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

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

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

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

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

37 (4) The owner or operator of a municipal solid waste landfill  
38 must submit a gas collection and control system equipment removal



1 report to the department or local authority within 30 days of well  
2 capping or the removal or cessation of operation of the gas  
3 collection, treatment, or control system equipment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) The criteria that the department may use to evaluate  
35 alternative compliance option requests include, but are not limited  
36 to: Compliance history; documentation containing the landfill gas  
37 flow rate and measured methane concentrations for individual gas  
38 collection wells or components; permits; component testing and

1 surface monitoring results; gas collection and control system  
2 operation, maintenance, and inspection records; and historical  
3 meteorological data.

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

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

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

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

21 NEW SECTION. **Sec. 12.** Any person who violates this chapter or  
22 any rules that implement this chapter may incur a civil penalty  
23 pursuant to RCW 70A.15.3160. The department shall waive penalties in  
24 the event the owner or operator of the landfill is actively taking  
25 corrective actions to control any methane exceedances. Penalties  
26 collected under this section must be deposited into the air pollution  
27 control account created in RCW 70A.15.1010 and may only be used to  
28 implement chapter 70A.--- RCW (the new chapter created in section 18  
29 of this act).

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

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 12 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 12  
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 Ways & Means

**ADOPTED AS AMENDED 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.

--- END ---