
SUBSTITUTE HOUSE BILL 1663

State of Washington

67th Legislature

2022 Regular Session

By House Environment & Energy (originally sponsored by Representatives Duerr, Fitzgibbon, Ryu, Berry, Leavitt, Ramel, Thai, Walen, Valdez, Goodman, Gregerson, Macri, Peterson, Slatter, Tharinger, Kloba, Pollet, Harris-Talley, and Hackney)

READ FIRST TIME 01/24/22.

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

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

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

8 (1) "Active municipal solid waste landfill" means a municipal
9 solid waste landfill that has accepted or is accepting solid waste
10 for disposal and has not been closed in accordance with the
11 requirements set forth in WAC 173-351-500 as it existed on January
12 10, 2022.

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

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

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

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

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

9 (7) "Emission" means a release of air contaminants into the
10 ambient air.

11 (8) "Gas collection system" means any system that employs various
12 gas collection wells and connected piping, and mechanical blowers,
13 fans, pumps, or compressors to create a pressure gradient and
14 actively extract landfill gas.

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

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

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

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

30 NEW SECTION. **Sec. 2.** (1) This chapter applies to all municipal
31 solid waste landfills that received solid waste after January 1,
32 1977, except as provided in subsection (2) of this section.

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

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

37 (b) Landfills that receive only inert waste or nondecomposable
38 wastes.

1 (3) The department must adopt rules to implement this chapter.
2 The rules adopted by the department must be informed by landfill
3 methane regulations adopted by the California air resources board,
4 the Oregon environmental quality commission, and the United States
5 environmental protection agency.

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

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

15 (b) The waste in place report must be submitted annually until
16 either:

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

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

21 (2) Each owner or operator of a municipal solid waste landfill
22 having greater than or equal to 450,000 tons of waste in place must
23 calculate the landfill gas heat input capacity pursuant to section 8
24 of this act and the department's implementing rules and must submit a
25 landfill gas heat input capacity report to the department or local
26 authority.

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

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

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

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

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

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

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

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

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

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

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

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

38 (II) All instantaneous surface monitoring records.

1 NEW SECTION. **Sec. 4.** (1) The owner or operator of any municipal
2 solid waste landfill that has a calculated landfill gas heat input
3 capacity greater than or equal to 3,000,000 British thermal units per
4 hour recovered must install a gas collection and control system that
5 meets the requirements of this section and the department's
6 implementing rules adopted pursuant to section 2 of this act, unless
7 the owner or operator demonstrates to the satisfaction of the
8 department or local authority that after four consecutive quarterly
9 monitoring periods there is no measured concentration of methane of
10 200 parts per million by volume or greater using the instantaneous
11 surface monitoring procedures specified in section 8 of this act and
12 the department's implementing rules adopted pursuant to section 2 of
13 this act. The owner or operator of a municipal solid waste landfill
14 may partner with a third party to operate all or a portion of the gas
15 collection and control system, but the obligation to comply with the
16 requirements of this chapter, and the liability for civil penalties
17 issued pursuant to this chapter, remain the responsibility of the
18 owner or operator of the municipal solid waste landfill.

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

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

28 (4) The gas collection and control system, if it uses a flare,
29 must achieve a methane destruction efficiency of at least 99 percent
30 by weight and must use either an enclosed flare or, if the system
31 uses an open flare, the open flare must comply with the following
32 requirements:

33 (a) The open flare must meet the requirements of 40 C.F.R. Sec.
34 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

35 (b) An open flare installed and operating prior to August 1,
36 2022, may operate until January 1, 2032, unless the owner or operator
37 demonstrates to the satisfaction of the department or local authority
38 that the landfill gas heat input capacity is less than 3,000,000
39 British thermal units per hour pursuant to section 8 of this act and
40 the department's implementing rules adopted pursuant to section 2 of

1 this act and is insufficient to support the continuous operation of
2 an enclosed flare or other gas control device; and

3 (c) The owner or operator may temporarily operate an open flare
4 during the repair or maintenance of the gas control system, or while
5 awaiting the installation of an enclosed flare, or to address offsite
6 gas migration issues. Any owner or operator seeking to temporarily
7 operate an open flare must submit a written request to the department
8 or local authority pursuant to section 10 of this act and the
9 department's implementing rules adopted pursuant to section 2 of this
10 act.

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

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

18 (a) The device or devices must achieve a methane destruction
19 efficiency of at least 97 percent by weight; and

20 (b) If a boiler or a process heater is used as the gas control
21 device, the landfill gas stream must be introduced into the flame
22 zone, except that where the landfill gas is not the primary fuel for
23 the boiler or process heater, introduction of the landfill gas stream
24 into the flame zone is not required.

25 (7) The owner or operator of a municipal solid waste landfill
26 must conduct an annual source test for any gas control device or
27 devices subject to this section using the test methods identified in
28 section 8 of this act and the department's implementing rules adopted
29 pursuant to section 2 of this act.

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

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

4 (b) An average methane concentration limit of 25 parts per
5 million by volume as determined by integrated surface emissions
6 monitoring.

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

8 (a) The working face of the landfill;

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

15 (c) Areas of the landfill surface where the landfill cover
16 material has been removed for law enforcement activities requiring
17 excavation; or

18 (d) Areas of the landfill in which the landfill owner or
19 operator, or a designee of the owner or operator, is engaged in
20 active mining for minerals or metals.

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

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

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

36 NEW SECTION. **Sec. 7.** (1) The owner or operator of a municipal
37 solid waste landfill must maintain records and prepare reports as

1 prescribed in this section and in the department's implementing rules
2 adopted pursuant to section 2 of this act.

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

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

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

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

27 (6) The owner or operator of a municipal solid waste landfill
28 with fewer than 450,000 tons of waste in place must submit a waste in
29 place report to the department or local authority.

30 NEW SECTION.

Sec. 8.

(1) Any instrument used for the
31 measurement of methane must be a hydrocarbon detector or other
32 equivalent instrument approved by the department or local authority
33 based on standards adopted by the department that address
34 calibration, specifications, and performance criteria.

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

38 (3) The owner or operator of a municipal solid waste landfill
39 must measure the landfill surface concentration of methane using a

1 hydrocarbon detector meeting the requirements of this section and the
2 department's implementing rules adopted pursuant to section 2 of this
3 act.

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

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

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

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

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

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

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

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

31 (c) The owner or operator submits an equipment removal report to
32 the department or local authority pursuant to section 7 of this act
33 and the department's implementing rules adopted pursuant to section 2
34 of this act.

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

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

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

16 (3) The department must review the requested alternatives and
17 either approve or disapprove the alternatives within 120 days. The
18 department may request that additional information be submitted as
19 part of the review of the requested alternatives.

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

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

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

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

36 NEW SECTION. **Sec. 13.** The department and local authorities may
37 assess and collect such fees as may be necessary to recover the

1 direct and indirect costs associated with the implementation of this
2 chapter.

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

5 (1) A person is a covered entity as of the beginning of the first
6 compliance period and all subsequent compliance periods if the person
7 reported emissions under RCW 70A.15.2200 for any calendar year from
8 2015 through 2019, or if additional data provided as required by this
9 chapter indicates that emissions for any calendar year from 2015
10 through 2019 equaled or exceeded any of the following thresholds, or
11 if the person is a first jurisdictional deliverer and imports
12 electricity into the state during the compliance period:

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

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

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

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

36 (e)(i) Where the person supplies natural gas in amounts that
37 would result in exceeding 25,000 metric tons of carbon dioxide
38 equivalent emissions if fully combusted or oxidized, excluding the
39 amounts for fuel products that are produced or imported with a

1 documented final point of delivery outside of Washington and
2 combusted outside of Washington, and excluding the amounts: (A)
3 Supplied to covered entities under (a) through (d) of this
4 subsection; and (B) delivered to opt-in entities;

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

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

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

28 (3) ~~((a))~~ A person is a covered entity beginning January 1,
29 2031, and all subsequent compliance periods if the person reported
30 emissions under RCW 70A.15.2200 or provided emissions data as
31 required by this chapter for any calendar year from 2027 through
32 2029, where the person owns or operates a ~~((~~

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

36 ~~(ii) Railroad)~~ railroad company, as that term is defined in RCW
37 81.04.010, and the railroad company's emissions equal or exceed
38 25,000 metric tons of carbon dioxide equivalent.

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

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

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

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

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

29 (5) For types of emission sources described in subsection (1) of
30 this section that begin or modify operation after January 1, 2023,
31 and types of emission sources described in subsection (2) of this
32 section that begin or modify operation after 2027, coverage under the
33 program starts in the calendar year in which emissions from the
34 source exceed the applicable thresholds in subsection (1) or (2) of
35 this section, or upon formal notice from the department that the
36 source is expected to exceed the applicable emissions threshold,
37 whichever happens first. Sources meeting these conditions are
38 required to transfer their first allowances on the first transfer
39 deadline of the year following the year in which their emissions were
40 equal to or exceeded the emissions threshold.

1 (6) For emission sources described in subsection (1) of this
2 section that are in operation or otherwise active between 2015 and
3 2019 but were not required to report emissions for those years under
4 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
5 coverage under the program starts in the calendar year following the
6 year in which emissions from the source exceed the applicable
7 thresholds in subsection (1) of this section as reported pursuant to
8 RCW 70A.15.2200 or provided as required by this chapter, or upon
9 formal notice from the department that the source is expected to
10 exceed the applicable emissions threshold for the first year that
11 source is required to report emissions, whichever happens first.
12 Sources meeting these criteria are required to transfer their first
13 allowances on the first transfer deadline of the year following the
14 year in which their emissions, as reported under RCW 70A.15.2200 or
15 provided as required by this chapter, were equal to or exceeded the
16 emissions threshold.

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

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

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

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

26 (d) Carbon dioxide emissions from the combustion of biomass or
27 biofuels;

28 (e)(i) Motor vehicle fuel or special fuel that is used
29 exclusively for agricultural purposes by a farm fuel user. This
30 exemption is available only if a buyer of motor vehicle fuel or
31 special fuel provides the seller with an exemption certificate in a
32 form and manner prescribed by the department. For the purposes of
33 this subsection, "agricultural purposes" and "farm fuel user" have
34 the same meanings as provided in RCW 82.08.865.

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

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

3 (g) Emissions from municipal solid waste landfills that are
4 subject to, and in compliance with, chapter 70A.--- RCW (the new
5 chapter created in section 16 of this act).

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

14 (9) (a) The legislature intends to promote a growing and
15 sustainable economy and to avoid leakage of emissions from
16 manufacturing to other locations. The legislature further intends to
17 see innovative new businesses locate and grow in Washington that
18 contribute to Washington's prosperity and environmental objectives.

19 (b) Consistent with the intent of the legislature to avoid the
20 leakage of emissions to other jurisdictions, in achieving the state's
21 greenhouse gas limits in RCW 70A.45.020, the state, including lead
22 agencies under chapter 43.21C RCW, shall pursue the limits in a
23 manner that recognizes that the siting and placement of new or
24 expanded best-in-class facilities with lower carbon emitting
25 processes is in the economic and environmental interests of the state
26 of Washington.

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

35 (d) Covered emissions from an entity that is or will be a covered
36 entity under this chapter may not be the basis for denial of a permit
37 for a new or expanded facility. Covered emissions must be included in
38 the analysis undertaken pursuant to (c) of this subsection. Nothing
39 in this subsection requires a lead agency or a permitting agency to

1 approve or issue a permit to a permit applicant, including to a new
2 or expanded fossil fuel project.

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

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

13 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
14 43.05.150, and in addition to or as an alternate to any other penalty
15 provided by law, any person who violates any of the provisions of
16 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~or 70A.60~~) 70A.535
17 ((RCW)), or 70A.--- RCW (the new chapter created in section 16 of
18 this act), RCW 76.04.205, or any of the rules in force under such
19 chapters or section may incur a civil penalty in an amount not to
20 exceed ten thousand dollars per day for each violation. Each such
21 violation shall be a separate and distinct offense, and in case of a
22 continuing violation, each day's continuance shall be a separate and
23 distinct violation. Enforcement actions related to violations of RCW
24 76.04.205 must be consistent with the provisions of RCW 76.04.205.

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

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

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

38 (3) Each act of commission or omission which procures, aids or
39 abets in the violation shall be considered a violation under the

1 provisions of this section and subject to the same penalty. The
2 penalties provided in this section shall be imposed pursuant to RCW
3 43.21B.300.

4 (4) (a) Except as provided in (b) of this subsection, all
5 penalties recovered under this section by the department or the
6 department of natural resources shall be paid into the state treasury
7 and credited to the air pollution control account established in RCW
8 70A.15.1010 or, if recovered by the authority, shall be paid into the
9 treasury of the authority and credited to its funds. If a prior
10 penalty for the same violation has been paid to a local authority,
11 the penalty imposed by the department under subsection (1) of this
12 section shall be reduced by the amount of the payment.

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

16 (5) To secure the penalty incurred under this section, the state
17 or the authority shall have a lien on any vessel used or operated in
18 violation of this chapter which shall be enforced as provided in RCW
19 60.36.050.

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

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

29 (8) The department shall develop rules for excusing excess
30 emissions from enforcement action if such excess emissions are
31 unavoidable. The rules shall specify the criteria and procedures for
32 the department and local air authorities to determine whether a
33 period of excess emissions is excusable in accordance with the state
34 implementation plan.

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

37 NEW SECTION. **Sec. 17.** If any provision of this act or its
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- **END** ---