
SUBSTITUTE SENATE BILL 5022

State of Washington

67th Legislature

2021 Regular Session

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

READ FIRST TIME 02/03/21.

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

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

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

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

1 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
2 section apply throughout this chapter unless the context clearly
3 requires otherwise.

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

8 (a) Water and flavored water;

9 (b) Beer or other malt beverages;

10 (c) Wine;

11 (d) Distilled spirits;

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

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

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

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

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

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

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

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

36 (8) "Food service business" means a business selling or providing
37 food for consumption on or off the premises, and includes full-
38 service restaurants, fast food restaurants, cafes, delicatessens,
39 coffee shops, grocery stores, vending trucks or carts, home delivery

1 services, delivery services provided through an online application,
2 and business or institutional cafeterias.

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

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

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

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

21 (c) Bladders or pouches that contain wine.

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

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

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

38 (13)(a) "Utensil" means a product designed to be used by a
39 consumer to facilitate the consumption of food or beverages,

1 including knives, forks, spoons, cocktail picks, chopsticks, splash
2 sticks, and stirrers.

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

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

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

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

17 (c) Registration information must include a list of the beverage
18 manufacturers and the brand names of the beverages represented in the
19 registration submittal. Beginning April 1, 2024, registration
20 information may accompany the annual reporting required under section
21 4 of this act.

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

33 (ii) The department must:

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

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

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

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

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

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

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

16 (b) For dairy milk:

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

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

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

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

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

37 (ii) Recycling rates;

38 (iii) The availability of recycled plastic suitable to meet the
39 minimum postconsumer recycled content requirements pursuant to
40 subsection (3) of this section, including the availability of high

1 quality recycled plastic, and food-grade recycled plastic from
2 beverage container recycling programs;

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

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

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

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

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

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

20 NEW SECTION. **Sec. 4.** BEVERAGE MANUFACTURER REPORTING

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

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

37 (2) A beverage manufacturer that submits information or records
38 to the department under this chapter may request that the information
39 or records be made available only for the confidential use of the

1 department, the director, or the appropriate division of the
2 department. The director of the department must give consideration to
3 the request and if this action is not detrimental to the public
4 interest and is otherwise in accordance with the policies and
5 purposes of chapter 43.21A RCW, the director must grant the request
6 for the information to remain confidential as authorized in
7 RCW 43.21A.160.

8 NEW SECTION. **Sec. 5. FEES.** (1)(a) Beginning January 1, 2023, a
9 beverage manufacturer that does not meet the minimum postconsumer
10 recycled content requirements pursuant to section 3 of this act is
11 subject to an annual administrative fee pursuant to this section.
12 Beginning March 1, 2024, the administrative fee must be collected
13 annually, if a reduction has not been approved pursuant to subsection
14 (3) of this section and calculated in accordance with subsection (2)
15 of this section.

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

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

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

38 (ii) Example: [(Total pounds of plastic used x minimum
39 postconsumer recycled plastic target percentage) - (Total pounds of

1 plastic used x postconsumer recycled plastic percentage used)] x 20
2 cents.

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

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

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

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

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

19 (A) Anomalous market conditions;

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

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

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

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

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

34 NEW SECTION. **Sec. 6.** EXPANDED POLYSTYRENE PROHIBITIONS. (1)
35 Beginning June 1, 2023, the sale and distribution of the following
36 expanded polystyrene products in or into the state is prohibited:

37 (a) A portable container that is designed or intended to be used
38 for cold storage, except for expanded polystyrene containers used for
39 drugs, medical devices, and biological materials as defined in the

1 federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or
2 shipping perishable commodities from a wholesale or retail
3 establishment;

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

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

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

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

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

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

27 (c) Penalties collected under this section must be deposited in
28 the model toxics control operating account created in RCW
29 70A.305.180.

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

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

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

- 1 (a) Produces the products subject to restrictions in subsection
2 (1) of this section; or
3 (b) Is an importer or domestic distributor of a product subject
4 to restrictions in subsection (1) of this section sold or offered for
5 sale in or into the state.

6 NEW SECTION. **Sec. 7.** OPTIONAL SERVICEWARE. (1) Beginning
7 January 1, 2022:

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

- 12 (i) Utensils;
13 (ii) Straws;
14 (iii) Condiment packaging; and
15 (iv) Beverage cup lids.

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

- 20 (i) A food service business at which no opportunity is provided
21 for the on-site consumption of food or beverages; or
22 (ii) A food service business serving food or beverages to
23 customers via a drive-through.

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

- 26 (i) Hot beverages;
27 (ii) Beverages provided through delivery service or curbside
28 pickup; and
29 (iii) Beverages served to customers via a drive-through.

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

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

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

7 (c) Penalties collected under this section must be deposited in
8 the model toxics control operating account created in RCW
9 70A.305.180.

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

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

18 NEW SECTION. **Sec. 8.** DEPARTMENT DUTIES. (1) The department may
19 conduct audits and investigations for the purpose of ensuring
20 compliance with section 3 of this act based on the information
21 reported under section 4 of this act.

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

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

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

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

35 NEW SECTION. **Sec. 9.** RECYCLING ENHANCEMENT FEE ACCOUNT. The
36 recycling enhancement fee account is created in the state treasury.
37 All fees collected by the department pursuant to section 5 of this
38 act must be deposited in the account. Only the director of the

1 department or the director's designee may authorize expenditures from
2 the account. The account is subject to the allotment procedures under
3 chapter 43.88 RCW, but an appropriation is not required for
4 expenditures. Expenditures from the account may be used by the
5 department only for providing funding to the recycling development
6 center created in RCW 70A.240.030 for the purpose of furthering the
7 development of recycling infrastructure in this state.

8 NEW SECTION. **Sec. 10.** RECYCLED CONTENT ACCOUNT. The recycled
9 content account is created in the custody of the state treasury. All
10 receipts received by the department under section 3 of this act must
11 be deposited in the account. Only the director of the department or
12 the director's designee may authorize expenditures from the account.
13 The account is subject to the allotment procedures under chapter
14 43.88 RCW, but an appropriation is not required for expenditures.
15 Expenditures from the account may be used by the department only for
16 implementing, administering, and enforcing the requirements of
17 sections 3 through 5 of this act.

18 NEW SECTION. **Sec. 11.** MARKET STUDY. (1) Subject to the
19 availability of amounts appropriated for this specific purpose prior
20 to January 1, 2028, the department shall contract with a research
21 university or an independent third-party consultant to study the
22 polyethylene terephthalate and high-density polyethylene markets for
23 all of the following:

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

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

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

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

1 **Sec. 12.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035
2 are each reenacted and amended to read as follows:

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

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
12 70A.515.060, sections 6 and 7 of this act, 76.09.170, 77.55.440,
13 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
14 90.56.330, and 90.64.102.

15 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
16 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
17 section 3 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
18 90.48.120, and 90.56.330.

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

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

29 (e) Decisions of local health departments regarding the issuance
30 and enforcement of permits to use or dispose of biosolids under RCW
31 70A.226.090.

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

36 (g) Decisions of local conservation districts related to the
37 denial of approval or denial of certification of a dairy nutrient
38 management plan; conditions contained in a plan; application of any
39 dairy nutrient management practices, standards, methods, and

1 technologies to a particular dairy farm; and failure to adhere to the
2 plan review and approval timelines in RCW 90.64.026.

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

6 (i) Decisions of the department of natural resources, the
7 department of fish and wildlife, and the department that are
8 reviewable under chapter 76.09 RCW, and the department of natural
9 resources' appeals of county, city, or town objections under RCW
10 76.09.050(7).

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

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

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

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

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

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

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

32 (b) Hearings conducted by the department pursuant to RCW
33 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
34 70A.15.3110, and 90.44.180.

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

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

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

4 **Sec. 13.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to
5 read as follows:

6 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
7 70A.205.280, 70A.300.090, 70A.20.050, sections 6 and 7 of this act,
8 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
9 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in
10 writing, either by certified mail with return receipt requested or by
11 personal service, to the person incurring the penalty from the
12 department or the local air authority, describing the violation with
13 reasonable particularity. For penalties issued by local air
14 authorities, within thirty days after the notice is received, the
15 person incurring the penalty may apply in writing to the authority
16 for the remission or mitigation of the penalty. Upon receipt of the
17 application, the authority may remit or mitigate the penalty upon
18 whatever terms the authority in its discretion deems proper. The
19 authority may ascertain the facts regarding all such applications in
20 such reasonable manner and under such rules as it may deem proper and
21 shall remit or mitigate the penalty only upon a demonstration of
22 extraordinary circumstances such as the presence of information or
23 factors not considered in setting the original penalty.

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

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

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

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

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

38 (4) If the amount of any penalty is not paid to the department
39 within thirty days after it becomes due and payable, the attorney

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

11 (5) All penalties recovered shall be paid into the state treasury
12 and credited to the general fund except those penalties imposed
13 pursuant to RCW 18.104.155, which shall be credited to the
14 reclamation account as provided in RCW 18.104.155(7), RCW
15 70A.15.3160, the disposition of which shall be governed by that
16 provision, RCW 70A.300.090, which shall be credited to the model
17 toxics control operating account created in RCW 70A.305.180, RCW
18 90.56.330, which shall be credited to the coastal protection fund
19 created by RCW 90.48.390, and RCW 70A.355.070, which shall be
20 credited to the underground storage tank account created by RCW
21 70A.355.090.

22 NEW SECTION. **Sec. 14.** Sections 2 through 11 of this act
23 constitute a new chapter in Title 70A RCW.

24 NEW SECTION. **Sec. 15.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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