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**SECOND SUBSTITUTE SENATE BILL 5022**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

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

READ FIRST TIME 02/22/21.

1 AN ACT Relating to managing solid waste through prohibitions on  
2 expanded polystyrene, providing for food serviceware upon customer  
3 request, and requiring recycled content in plastic beverage  
4 containers; amending RCW 43.21B.300; reenacting and amending RCW  
5 43.21B.110; adding a new chapter to Title 70A RCW; creating a new  
6 section; and prescribing penalties.

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

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

14 (2) By implementing a minimum recycled content requirement for  
15 plastic beverage containers, prohibiting the sale and distribution of  
16 certain expanded polystyrene products, and establishing optional  
17 serviceware requirements as provided for in this chapter, the  
18 legislature intends to take another step towards ensuring plastic  
19 packaging and other packaging materials are reduced, recycled, and  
20 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;

21 (c) Bladders or pouches that contain wine; or

22 (d) Liners, caps, corks, closures, labels, and other items added  
23 externally or internally but otherwise separate from the structure of  
24 the bottle or container.

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

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

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

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

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

7 NEW SECTION. **Sec. 3.** POSTCONSUMER RECYCLED CONTENT. (1)

8 Beginning January 1, 2023, beverage manufacturers that offer for  
9 sale, sell, or distribute in Washington beverages in plastic beverage  
10 containers must meet minimum postconsumer recycled content as  
11 required under subsection (3) of this section.

12 (2)(a) On or before April 1, 2022, and annually thereafter,  
13 beverage manufacturers that offer for sale, sell, or distribute in  
14 Washington beverages in plastic beverage containers must register  
15 with the department individually or through a third-party  
16 representative registering on behalf of a group of beverage  
17 manufacturers.

18 (b) After January 1, 2023, a beverage manufacturer that offers  
19 for sale, sells, or distributes in Washington beverages in plastic  
20 beverage containers not registered with the department either  
21 individually or through a third party may not sell or supply beverage  
22 containers in or into Washington state.

23 (c) Registration information must include a list of the beverage  
24 manufacturers and the brand names of the beverages represented in the  
25 registration submittal. Beginning April 1, 2024, registration  
26 information may accompany the annual reporting required under section  
27 4 of this act.

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

39 (ii) The department must:

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

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

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

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

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

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

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

22 (b) For dairy milk:

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

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

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

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

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

4 (ii) Recycling rates;

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 4.** BEVERAGE MANUFACTURER REPORTING  
28 REQUIREMENTS. (1)(a) Beginning April 1, 2024, beverage manufacturers,  
29 individually or through a third party representing a group of  
30 manufacturers, must provide an annual report to the department that  
31 includes the amount of virgin plastic and the amount of postconsumer  
32 recycled content by resin type used for plastic beverage containers  
33 sold, offered for sale, or distributed into Washington state,  
34 including the total postconsumer recycled content resins as a  
35 percentage of total weight. The report must be submitted under  
36 penalty of perjury and in a format and manner prescribed by the  
37 department. A manufacturer may submit national data allocated on a  
38 per capita basis for Washington to approximate the information  
39 required in this subsection if the manufacturer demonstrates to the

1 department that state level data is not available or feasible to  
2 generate.

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

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

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

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

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

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

7 (ii) Example: [(Total pounds of plastic used x minimum  
8 postconsumer recycled plastic target percentage) - (Total pounds of  
9 plastic used x postconsumer recycled plastic percentage used)] x 20  
10 cents.

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

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

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

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

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

27 (A) Anomalous market conditions;

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

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

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

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



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

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

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

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

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

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

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

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

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

36 (c) Penalties collected under this section must be deposited in  
37 the model toxics control operating account created in RCW  
38 70A.305.180.

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

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

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

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

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

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

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

- 23 (i) Utensils;
- 24 (ii) Straws;
- 25 (iii) Condiment packaging; and
- 26 (iv) Beverage cup lids.

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

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

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

- 37 (i) Hot beverages;
- 38 (ii) Beverages provided through delivery service or curbside  
39 pickup; and

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

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

12 (3) (a) The department may issue a civil penalty of no less than  
13 \$150 per day and no more than \$2,000 per day to the owner or operator  
14 of a food service business for each day single-use food service  
15 products are provided in violation of this section.

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

18 (c) Penalties collected under this section must be deposited in  
19 the model toxics control operating account created in RCW  
20 70A.305.180.

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 9.** RECYCLING ENHANCEMENT FEE ACCOUNT. The  
9 recycling enhancement fee account is created in the state treasury.  
10 All fees collected by the department pursuant to section 5 of this  
11 act must be deposited in the account. Only the director of the  
12 department or the director's designee may authorize expenditures from  
13 the account. The account is subject to the allotment procedures under  
14 chapter 43.88 RCW, but an appropriation is not required for  
15 expenditures. Expenditures from the account may be used by the  
16 department only for providing funding to the recycling development  
17 center created in RCW 70A.240.030 for the purpose of furthering the  
18 development of recycling infrastructure in this state.

19 NEW SECTION. **Sec. 10.** RECYCLED CONTENT ACCOUNT. The recycled  
20 content account is created in the custody of the state treasury. All  
21 receipts received by the department under section 3 of this act must  
22 be deposited in the account. Only the director of the department or  
23 the director's designee may authorize expenditures from the account.  
24 The account is subject to the allotment procedures under chapter  
25 43.88 RCW, but an appropriation is not required for expenditures.  
26 Expenditures from the account may be used by the department only for  
27 implementing, administering, and enforcing the requirements of  
28 sections 3 through 5 of this act.

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

35 (a) Analyzing market conditions and opportunities in the state's  
36 recycling industry for meeting the minimum postconsumer recycled

1 content requirements for plastic beverage containers pursuant to  
2 sections 3 and 4 of this act;

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

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

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

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

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

21 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
22 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
23 70A.515.060, sections 6 and 7 of this act, 76.09.170, 77.55.440,  
24 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
25 90.56.330, and 90.64.102.

26 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
27 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
28 section 3 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
29 90.48.120, and 90.56.330.

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

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

1 (e) Decisions of local health departments regarding the issuance  
2 and enforcement of permits to use or dispose of biosolids under RCW  
3 70A.226.090.

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

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

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

17 (i) Decisions of the department of natural resources, the  
18 department of fish and wildlife, and the department that are  
19 reviewable under chapter 76.09 RCW, and the department of natural  
20 resources' appeals of county, city, or town objections under RCW  
21 76.09.050(7).

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

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

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

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

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

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

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

3 (b) Hearings conducted by the department pursuant to RCW  
4 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
5 70A.15.3110, and 90.44.180.

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

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

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

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

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

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

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

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

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

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

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

20 (5) All penalties recovered shall be paid into the state treasury  
21 and credited to the general fund except those penalties imposed  
22 pursuant to RCW 18.104.155, which shall be credited to the  
23 reclamation account as provided in RCW 18.104.155(7), RCW  
24 70A.15.3160, the disposition of which shall be governed by that  
25 provision, RCW 70A.300.090, which shall be credited to the model  
26 toxics control operating account created in RCW 70A.305.180, RCW  
27 90.56.330, which shall be credited to the coastal protection fund  
28 created by RCW 90.48.390, and RCW 70A.355.070, which shall be  
29 credited to the underground storage tank account created by RCW  
30 70A.355.090.

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

33 NEW SECTION. **Sec. 15.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

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