

# Proposed Substitute House Bill 1663

By Representative Duerr

**Original Bill:** Reducing methane emissions from landfills.

## **Proposed Substitute (H-2239.1/22) compared to the House Bill 1663 (H-1833.2):**

- Adds an exemption from the emissions standards established in the bill for areas of a landfill in which the landfill owner or operator, or a designee of the owner or operator, is engaged in active mining for minerals or metals.
- Removes limited purpose landfills from coverage under the bill.
- Authorizes owners or operators of municipal solid waste landfills to partner with a third party to operate all or a portion of the gas collection and control system, subject to the qualification that the obligation to comply with the requirements of the bill, and the liability for civil penalties issued pursuant to the bill, remain the responsibility of the owner or operator of the municipal solid waste landfill.
- Specifies that if a flare is used to destroy gas emitted from a municipal solid waste landfill, the flare must achieve a 99 percent destruction efficiency.
- Changes the required destruction efficiency that an energy recovery device must achieve from 99 percent to 97 percent.

---

*Committee:* House Environment & Energy Committee  
*Staff:* Robert Hatfield (786-7117), Office of Program Research  
*Date:* January 19, 2022  
*Draft:* H-2239.1

---

**BILL REQUEST - CODE REVISER'S OFFICE**

---

BILL REQ. #: H-2239.1/22

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Reducing methane emissions from landfills.

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** ---