# Texas Commission on Environmental Quality
## Interoffice Memorandum

**To:** Commissioners **Date:** August 21, 2026

**Thru:** Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

**From:** Beth Seaton, Director
Office of Waste

**Docket No.:** 2025-1798-RUL

**Subject:** Commission Approval for Rulemaking Adoption
Chapter 37, Financial Assurance
Chapter 328, Waste Minimization and Recycling
House Bill 3229 Implementation
Rule Project No. 2025-031-328-WS

**Background and reason(s) for the rulemaking:**
Rulemaking is needed to implement House Bill (HB) 3229 passed by the 89th Texas Legislature, 2025.

HB 3229 amended the Texas Health and Safety Code (THSC) by adding new Chapter 376, Renewable Energy Component Recycling Facilities, and establishing new reporting, financial assurance, and penalty requirements for certain recycling facilities. The bill created requirements for recycling facilities that accept, process, and repurpose components from wind turbine generators, solar energy devices, and battery energy storage systems.

While HB 3229 does not explicitly require the Texas Commission on Environmental Quality (TCEQ or commission) to conduct rulemaking, commission rulemaking is necessary to establish standard requirements seen in other agency recycling programs involving financial assurance and to ensure the agency can utilize financial assurance funds provided by the recycling facilities.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**
If approved, the rulemaking will implement the requirements of HB 3229. Rule amendments in Title 30, Texas Administrative Code (30 TAC) Chapter 37, Financial Assurance, will identify the mechanisms which may be used to establish financial assurance in accordance with new THSC, Chapter 376. Chapter 376 allows an owner of a recycling facility to use a parent company guaranty, letter of credit, or a bond to secure financial assurance. The adopted rules implement THSC, Chapter 376, by limiting the mechanisms for recycling facilities subject to this rulemaking to a corporate guarantee where the guarantor must be a parent company, a letter of credit, or a bond.

New rules in 30 TAC Chapter 328, Waste Minimization and Recycling will establish the purpose, applicability, and definitions for terms used in new Subchapter M. Reporting and cost estimate requirements will be established in new §328.431. Adopted §328.441 will incorporate the financial assurance requirements from HB 3229, as well as commission financial assurance procedures, into commission rule. Finally, the adopted rules will create recordkeeping requirements for facilities subject to adopted Subchapter M.

**B.) Scope required by federal regulations or state statutes:**
THSC, Chapter 376 requires recycling facilities to submit an annual report to TCEQ by January 15th each year containing an inventory of components accepted for recycling that have not yet been recycled, an estimated timeline to recycle these materials, a cost estimate to recycle or

dispose the materials prepared by an independent, third-party professional engineer licensed in Texas, and evidence of financial assurance equal to 100% of the projected recycling or disposal costs for the cost estimate provided. In subsequent years, the owner must submit a new report, with an updated inventory and cost estimate, and adjust the financial assurance to match the updated cost estimate.

As well, HB 3229 requires the commission to maintain a publicly available list of recycling facilities complying with THSC, Chapter 376 on its website. Implementation of this list and website does not require rulemaking.

HB 3229 further amended Texas Water Code (TWC), §5.013(a)(11) to give TCEQ jurisdiction over the responsibilities assigned by THSC, Chapter 376, and TWC §7.052 to set the amount of the penalty for a violation of THSC, Chapter 376 to not exceed $500 a day for each violation.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**
Limited additional provisions in rule are needed to align the financial assurance requirements in HB 3229 with the commission's established financial assurance procedures, ensure the agency is the beneficiary of the financial assurance, and identify when the agency can call on and use financial assurance funds. Provisions related to the cost estimate, including minimum requirements found in other recycling programs and review and approval requirements would also be adopted. These provisions are necessary to facilitate implementation of the statutory requirements including providing clarity and consistency with existing agency practices. The adopted rules will also establish recordkeeping requirements and additional definitions not found in HB 3229. These requirements are needed to ensure compliance with the statutory requirements.

**Statutory authority:**
The rule change will be adopted under the statutory authority of TWC, §5.013 (General Jurisdiction of Commission), §5.102 (General Powers), §5.103 (Rules), §7.052 (Maximum penalty), Texas Health and Safety Code (THSC) §361.011 (Commission's Jurisdiction: Municipal Solid Waste), THSC, §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), and Chapter 376 (Renewable Energy Component Recycling Facilities).

**Effect on the:**

**A.) Regulated community:**
The rulemaking will establish reporting and financial assurance requirements in commission rules for facilities recycling renewable energy components in accordance with HB 3229. Once a year, owners of recycling facilities will be required to conduct an inventory of unrecycled components, hire an independent professional engineer to prepare a cost estimate, obtain sufficient financial assurance coverage, and submit the necessary documents and reports to the agency by January 15th. Failure to comply with the requirements could result in an administrative penalty.

**B.) Public:**
The rulemaking does not create a group of affected persons who were not impacted previously. The public is not expected to be affected by this rulemaking.

**C.) Agency programs:**
The agency programs affected by this rulemaking include the Waste Permits Division (WPD), Fiscal Control Division (FCD), and Office of Compliance and Enforcement (OCE). WPD will administer the new reporting program, review and approve submitted reports, and maintain a

list of facilities in compliance with THSC, Chapter 376. FCD will review and approve financial assurance mechanisms. OCE will conduct investigations, review records, and may impose an administrative penalty for noncompliant recycling facilities.

**Stakeholder meetings:**
WPD sought informal stakeholder input, through email, on the reporting form design (i.e., what data should be collected) and bill implementation options (ex. inventory timeframes, closure requirements, etc.). Stakeholder feedback influenced rule language.

**Public Involvement Plan**
A public involvement plan is required for this rulemaking.

**Alternative Language Requirements**
Spanish language documents are required for this rulemaking.

**Public comment:**
The commission offered public hearings on April 23, 2026, and April 27, 2026. The comment period closed on April 27, 2026. Written comments were received from Harris County Pollution Control Services, one individual, and the Lone Star Chapter of the Sierra Club. No oral comments were received. The comments requested rule changes and clarification of who was subject to the rules and expressed concerns with adequate oversight of the recycling facilities.

**Significant changes from proposal:**
In response to comments, changes were made to clarify the definitions for battery energy storage system and owner. Additionally, the commission is adopting a definition for operator and corresponding changes to the rules which apply the reporting, financial assurance, and recordkeeping requirements to the owner or operator.

**Potential controversial concerns and legislative interest:**
No controversial concerns are anticipated with this rulemaking implementing legislation. Representative Stan Lambert authored the legislation.

**Will this rulemaking affect any current policies or require development of new policies?**
The rulemaking implements HB 3229, which impacts current policies, including the commission's Penalty Policy, and policies related to financial assurance applicable to recycling facilities.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**
The rulemaking will implement THSC, Chapter 376 and HB 3229. Without rulemaking, renewable energy component recycling facilities would still be required to report to the agency and provide evidence of financial assurance. However, HB 3229 did not clearly distinguish the agency as the beneficiary of the financial assurance nor when the agency can call on and utilize the funds.

**Key points in the adoption rulemaking schedule:**
***Texas Register*** **proposal publication date:** March 27, 2026
**Anticipated *Texas Register* adoption publication date:** September 25, 2026
**Anticipated effective date:** October 1, 2026
**Six-month *Texas Register* filing deadline:** September 27, 2026

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Re: Docket No. 2025-1798-RUL

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**Attachments:**
HB 3229 (Enrolled)

cc: Chief Clerk, 2 copies
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