

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §37.931.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rules implement House Bill (HB) 3229 passed by the 89th Texas Legislature, 2025. HB 3229 amended Texas Health and Safety Code (THSC) by adding new Chapter 376, Renewable Energy Component Recycling Facilities, which establishes new reporting, financial assurance, and penalty requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from wind turbine generators, solar energy devices, and battery energy storage systems. THSC, Chapter 376 requires owners of recycling facilities that recycle renewable energy components (henceforth called recycling facilities) to submit an annual report, by January 15, containing an inventory of unrecycled renewable energy components (including unrecycled components located offsite that the facility has taken control or ownership of), 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 for the cost estimate provided.

Proposed amendments to 30 TAC Chapter 37 are limited to implementing requirements specific to the financial assurance mechanisms authorized for these recycling facilities. While no other amendments are proposed to Chapter 37, recycling facilities impacted by this rulemaking would also be subject to existing rules in Chapter 37, including 30 TAC §§37.61, 37.141, 37.151, and Chapter 37, Subchapter J (Financial Assurance for Recycling Facilities).

As part of this rulemaking, the commission is proposing revisions to 30 TAC Chapter 328, Waste Minimization and Recycling, concurrently in this issue of the Texas Register.

Section by Section Discussion

§37.931, Financial Assurance Mechanisms

The commission proposes new §37.931(3) to specify the authorized financial assurance mechanisms for recycling facilities subject to the financial assurance requirement in THSC, Chapter 376, and as proposed in 30 TAC Chapter 328, Subchapter M in this rulemaking. The commission proposes to amend §37.931 by adding a new paragraph (3) to implement THSC §376.003(c) as established by HB 3229.

THSC, Chapter 376 allows the owner to demonstrate financial assurance using a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency. A parent company guaranty is a type of corporate guarantee. A corporate guarantee may be used to demonstrate financial assurance under existing financial assurance rules in 30 TAC Chapter 37. Under Chapter 37, a corporate guarantor must be a direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator. The commission proposes to allow an owner to use a corporate guarantee to demonstrate financial assurance for recycling facilities but proposes to limit the guarantor to a parent company in accordance with THSC §376.003(c).

The commission recognizes that HB 3229 requires the owner of a recycling facility that accepts, processes, and repurposes components from renewable energy systems to submit evidence of financial assurance to the commission. The commission understands that the legislature intends for the commission to be the beneficiary of the financial assurance and to be able to access and use any funds from the financial assurance to recycle or dispose of all unrecycled components in the event that the owner of the recycling facility fails to do so. Accordingly, the

proposed rulemaking requires owners of recycling facilities to provide financial assurance in accordance with 30 TAC Chapter 37 to ensure that adequate funds are available to properly recycle or dispose of unrecycled components at a recycling facility. The commission's financial mechanisms (corporate guarantee, letter of credit, and payment bond) correspond to the financial assurance that may be included as acceptable forms of financial assurance in THSC §376.003(c). The wording and requirements for the financial assurance mechanism in proposed §37.931(3) must conform to the applicable requirements for financial assurance administered by the agency in Chapter 37.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically HB 3229 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a

local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the

agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amended rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. HB 3229 requires the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system to submit a report to the agency that includes evidence of financial assurance. The proposed rules implement HB 3229 by establishing the requirements for the financial assurance. Financial assurance provides a source of funding to the agency to perform closure of a facility in the event that the owner fails to do so. The financial assurance requirement would apply to the owner of a recycling facility under THSC Chapter 376 in the absence of these rules. Because the proposed rules implement financial assurance requirements, the proposed rules do not change any existing requirements that protect the environment or reduce risks to human health from environmental exposure, nor do the proposed rules affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rules do not exceed a standard set by federal law. The proposed amendments do not exceed an express requirement of state law or a requirement of a delegation agreement. These rules were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and TWC, that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amended rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. The proposed amended rules

in Chapter 37 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the proposed rules. The proposed rules in Chapter 37 establish financial assurance requirements for the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system, as required by HB 3229. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on April 23, 2026, at 10:00 am in Building E, Conference Room E201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted

during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by April 21, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on April 22, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

<https://events.teams.microsoft.com/event/3c2b83de-5109-4c02-9b48-680499d830cc@871a83a4-a1ce-4b7a-8156-3bcd93a08fba>

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule

Project Number 2025-031-328-WS. The comment period closes on April 27, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER J: FINANCIAL ASSURANCE FOR RECYCLING FACILITIES

§37.931

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC) §361.011, which confers the commission responsibility for the management of municipal solid waste; THSC §361.017, which confers the commission responsibility for the management of industrial solid waste and hazardous municipal waste and provides authority to control all aspects of the management of industrial solid waste and municipal hazardous waste by all practical and economically feasible methods consistent with its powers and duties under THSC Chapter 361 and other law, and THSC Chapter 376 which establishes requirements for renewable energy component recycling facilities.

The proposed rules implement House Bill (HB) 3229, 89th Texas Legislature, Regular Session, 2025, and THSC Chapters 361 and 376.

§37.931. Financial Assurance Mechanisms

Owners and operators subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter C of this chapter (relating to Financial Assurance

Mechanisms for Closure, Post Closure, and Corrective Action) to demonstrate financial assurance for closure except:

(1) a pay-in trust fund may not be used; [and]

(2) a surety bond guaranteeing performance may not be used unless the owner or operator is required to provide financial assurance under §332.47 of this title (relating to Permit Application Preparation); and [.]

(3) for recycling facilities subject to Chapter 328, Subchapter M (relating to Requirements for Renewable Energy Component Recycling Facilities), a corporate guarantee, a letter of credit, or a surety bond guaranteeing payment must be used. For the purpose of §37.261 and §37.361 of this title (relating to Corporate Guarantee and Corporate Guarantee), a corporate guarantor must be a parent company with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency.