

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§328.401, 328.411, 328.421, 328.431, 328.441, and 328.451.

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. The commission proposes new Subchapter M, Requirements for Renewable Energy Component Recycling Facilities, in Chapter 328 to implement HB 3229.

HB 3229 also amended Texas Water Code (TWC) §5.013(a)(11) to give TCEQ jurisdiction over the responsibilities assigned by THSC, Chapter 376 and amended 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. Additionally, HB 3229 required the commission maintain a list of recycling facilities in compliance with THSC, Chapter 376 on the agency's website.

Closure and Financial Assurance Applicability

The commission recognizes that HB 3229 requires the owner of the recycling facility to submit evidence of financial assurance to the commission, with the commission being the beneficiary of the financial assurance and 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.

The commission's financial assurance rules are based on proper closure, in accordance with respective program rules. If closure is not properly performed, then the commission can use financial assurance to conduct closure. Typically, closure for recycling facilities under existing requirements will begin when the owner or operator provides written notification under 30 TAC §330.11(c) and §328.5 for municipal solid wastes or under 30 TAC §335.6 for nonhazardous industrial wastes to the executive director of their intent to close the facility. Solely for the purpose of Subchapter M, the commission is proposing a definition of closure to mean the act, outside of daily operations, of collecting all components accepted from a wind turbine generator, a solar energy device, or a battery energy storage system, including any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility, and properly recycling or disposing of the components. To implement the requirements for financial assurance from HB 3229, recycling facilities subject to Subchapter M may be required to perform closure. The recycling facility owner's failure to perform closure when required allows the executive director to call on the financial assurance mechanism under 30 TAC §37.101.

Enforcement, Including Penalties

The commission may conduct investigations to ensure compliance with this subchapter. The

commission and the attorney general, as appropriate, will enforce this subchapter and may, among other actions, institute a suit under TWC, §7.032 for injunctive relief against a person to restrain the violation or threat of violation of proposed Subchapter M.

Failure to comply with this subchapter may result in enforcement, including penalties. The amount of an administrative penalty for a violation of this subchapter will not exceed \$500 a day for each violation.

Internet Posting

In accordance with HB 3229, TCEQ will maintain a publicly available list of recycling facilities complying with THSC, Chapter 376, on its website. For owners of recycling facilities reporting by January 15th, the agency will compile and publish a list by March 1st of each year. After that list has been published, the agency will maintain and update the list periodically.

As part of this rulemaking, the commission is proposing revisions to 30 TAC Chapter 37, Financial Assurance, concurrently in this issue of the Texas Register.

Section by Section Discussion

Subchapter M, Reporting and Financial Assurance Standards for Renewable Energy

Component Recycling Facilities

The commission proposes new Subchapter M to implement HB 3229 and establish the reporting, financial assurance, and recordkeeping requirements for owners of renewable energy components recycling facilities.

§328.401, Purpose

Proposed new §328.401 establishes the purpose of Chapter 328, Subchapter M, which is to establish procedures and requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system. Proposed new §328.401 implements THSC Chapter 376 as enacted by HB 3229.

§328.411, Applicability

Proposed new §328.411 describes the applicability of Chapter 328, Subchapter M and implements THSC Chapter 376 as enacted by HB 3229.

Subchapter M, through Subsection (a), applies to a facility involved in the recycling of components to recover valuable materials from a wind turbine generator, solar energy device, or battery energy storage system.

Subsection (b) states that compliance with this subchapter does not exempt nor exclude recycling facilities from the applicability of other local, state, or federal solid waste laws. While THSC Chapter 376 is silent on the applicability of other local, state, or federal solid waste laws, the commission proposes to include this warning to place owners and operators of recycling facilities on notice that multiple other regulations are applicable to these activities. HB 3229 enacts new THSC Chapter 376 and does not repeal or amend other applicable laws that apply to recycling activities or the management of solid waste.

Components subject to proposed new Subchapter M are also subject to other local, state, or federal requirements such as municipal solid waste, industrial solid waste, or hazardous waste management regulations, including universal waste. Components subject to this subchapter

must be recycled or disposed of in a manner that complies with local, state, and federal law. Components that are received from municipal sources must be managed, recycled, and disposed of in accordance with 30 TAC Chapter 328 and 30 TAC Chapter 330. Components that are classified as hazardous waste under 30 TAC §335.504 must be managed, recycled, and disposed of in accordance with 30 TAC Chapter 335.

The owner or operator of the recycling facility must operate the facility to prevent nuisances and disturbances and comply with applicable requirements of 30 TAC §§328.3, 330.15, or 335.4. Management of wastes subject to 30 TAC Chapter 335 that are received or generated at the facility may be required to comply with the waste classification requirements of 30 TAC Chapter 335, Subchapter R.

Recycling facilities are subject to recyclable material retention rules which prohibit speculative accumulation including 30 TAC §328.4(b) for recyclable materials derived from municipal sources, and 30 TAC §335.17(a)(8) for recyclable materials derived from industrial sources.

§328.421, Definitions

Proposed new §328.421 adds definitions for the terms battery energy storage system, closure, owner, recycling, recycling facility, solar energy device, unrecycled components, and wind turbine generator for the purpose of proposed Subchapter M. Proposed definitions for battery energy storage system, solar energy device, and wind turbine generator uses terms consistent with THSC Chapter 376 as enacted by HB 3229 but not explicitly defined in Chapter 376.

The definitions for closure, owner, recycling, recycling facility, and unrecycled components are intended to provide context for understanding and complying with the proposed rules. The

definition of closure describes the activities that must be conducted to close under Subchapter M. This definition is included to describe the activities required of the recycling facility owner, typically when ceasing operations, but also in situations described in §328.441(e), to properly recycle or dispose of accepted components which results in no unrecycled components at the recycling facility or under the control of the recycling facility. The commission solicits comments on the definition of closure.

The definition of owner is proposed to clarify who is responsible for reporting under Subchapter M. The facility owner is the person who holds title to the real property on which the recycling facility is located, including fixtures and appurtenances. The commission understands that the facility may be owned by one person and operated by another. If the operator of the recycling facility is different than the owner, the requirement to submit the report is with the owner. The commission solicits comments on limiting the report submission requirement to only the recycling facility owner, or if an operator of a recycling facility may submit annual reports and obtain financial assurance.

Recycling and recycling facility definitions are proposed to consistently and concisely describe what is and is not considered recycling activities and a recycling facility. Unrecycled components concisely describes components from a wind turbine generator, a solar energy device, or a battery energy storage system that have been accepted but not recycled and includes offsite components the recycling facility has assumed control of. The commission specifically solicits comments on the proposed definitions.

§328.431, Reporting Requirements

Proposed new §328.431 establishes reporting and cost estimate requirements for the owner of

a recycling facility that accepts, processes, and repurposes renewable energy components to recover valuable materials under proposed Subchapter M. Proposed new §328.431 implements THSC §376.003 as enacted by HB 3229, however, the commission proposes additional rules, described below, to provide consistency with other agency programs and clarity for regulated entities.

Section 328.431 requires the owner of a recycling facility to submit an annual report to the executive director by January 15 of each year, on forms prescribed by the executive director. Paragraphs (1) - (3), which implement THSC, §376.003(a)(1) - (3), provide the required contents of the report, including an inventory of all unrecycled components accepted but not yet recycled, an estimated timeline for recycling or disposal, and a written cost estimate. New THSC Chapter 376 is silent on the format of an annual report. The commission proposes requiring regulated entities to use an agency prescribed form, in accordance with the commission's general statutory authority, for consistency in information submitted to executive director's staff and as a way to provide additional instruction and guidance to the regulated community. The commission solicits comments on requiring the owners of recycling facilities to submit the annual report on an agency prescribed form.

Proposed new §328.431(3), which implements THSC, §376.003(a)(3), requires owners to submit a written cost estimate, in current dollars, prepared and certified by an independent professional engineer, and describes the elements required for the cost estimate. However, new THSC Chapter 376 is silent on whether the cost estimate must be in current dollars. Other agency programs that have financial assurance elements require the cost estimate be in current dollars. Examples include scrap tires recycling (30 TAC §328.71(a)), municipal solid waste recycling and disposal (30 TAC §328.5(c) and 30 TAC §330.503, respectively), and hazardous

waste disposal (30 TAC §335.127, and §335.178). The commission proposes to require the cost estimate to be in current dollars, in accordance with the commission's general statutory authority, to ensure the cost estimate accurately calculates potential closure costs and financial assurance funding. The commission solicits comments on requiring cost estimates based in current dollars.

Additionally, other than “recycling or disposing of the [unrecycled] components,” new THSC Chapter 376 is silent on the activities that must be included in the cost estimate and who must perform those activities. The commission proposes §328.431(3)(A) – (C) to require the cost estimate include the cost of hiring a third-party for offsite recycling or disposal of unrecycled components, including any disposal or recycling fees by the destination facility, and loading and transportation costs. If the commission must utilize financial assurance posted by a recycling facility, the commission would incur these costs by having a third-party remove and properly recycle or dispose of unrecycled components. The activities contained in the cost estimate are common items that are required in cost estimates prepared for other recycling programs, including scrap tire (30 TAC §328.71), municipal solid waste (30 TAC §328.5(c)). The commission solicits feedback on the activities that must be accounted for in cost estimates prepared under Subchapter M.

The owner of a recycling facility that has no inventory of unrecycled components must still submit the report to the executive director annually. New THSC Chapter 376 requires the commission to maintain a list of recycling facilities in compliance with THSC Chapter 376, therefore, any recycling facility (that manages renewable energy components during the year) must report their inventory, even if that inventory is zero. The agency will use these reports to establish and maintain on the agency's website a list of recycling facilities that are in

compliance with THSC, Chapter 376.

§328.441, Financial Assurance Requirements

Proposed new §328.441 establishes financial assurance requirements for recycling facilities to ensure adequate funds are available for the commission to properly recycle or dispose of unrecycled components in the event that the owner fails to do so. Proposed new §328.441 implements THSC §376.003(b) and (c) as enacted by HB 3229.

New THSC Chapter 376 is silent on the procedures and process of demonstrating financial assurance. The commission proposes additional financial assurance requirements by utilizing existing commission financial assurance requirements, such as the specified wording of financial assurance mechanisms, and as further established in this rulemaking in 30 TAC Chapters 37 and 328.

Subsection (a) requires the owner of a recycling facility that accepts, processes, and repurposes components from renewable energy systems to provide financial assurance in accordance with Chapter 37, Subchapter J. The commission proposes Subsection (a) to direct and require the owner to comply with existing financial assurance requirements in Chapter 37. An owner must comply with requirements for financial assurance and mechanisms in 30 TAC Chapter 37, Subchapters A - D (except §§37.31, 37.131, 37.161, and 37.241(b) in accordance with §37.921(a)) and submit the proper financial assurance mechanism documentation with their report and cost estimate by January 15.

Subsection (b) requires the owner of the recycling facility to submit evidence of financial assurance with the first annual report in an amount equal to 100 percent of the cost estimate

described under §328.431. For each subsequent one-year reporting period, the owner must adjust the financial assurance to ensure it remains at or above the cost estimate for the current year. Subsection (b) implements THSC §376.003(b).

Subsection (c) specifies that financial assurance mechanisms must comply with proposed amended §37.931. The financial assurance mechanisms authorized for recycling facilities subject to Subchapter M are proposed in §37.931(3). Acceptable forms of financial assurance include a corporate guarantee, a letter of credit, or a bond. Subsection (c) generally implements THSC §376.003(c), except that the commission proposes corporate guarantee in §37.931, instead of a parent company guaranty found in HB 3229. 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 the direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator. The commission proposes in §37.931 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 wording of the mechanisms must comply with 30 TAC Chapter 37, Subchapter D.

Subsection (d) specifies the executive director will review and approve the cost estimate and documentation for the financial assurance mechanism. If deficiencies are noted in the cost estimate or financial assurance documentation, the executive director will communicate the deficiency within 30 days of receipt of the report. The owner will be required to make appropriate changes to the cost estimate and/or financial assurance mechanism and resubmit the revised documents, if deficiencies are noted. The executive director will include a deadline

for revisions when communicating deficiencies. When approved, the executive director will communicate approval to the owner and publish the name of the recycling facility on the agency's website as required by HB 3229. To help ensure proper estimation and compliant financial mechanisms are submitted, draft cost estimates and financial assurance documents can be submitted for "preliminary" review by the executive director, as long as the final documents are submitted by January 15.

When reporting for subsequent years, increases or decreases to the facility's cost estimate and financial assurance will be handled in a similar manner as described above and following 30 TAC §37.141 and §37.151, with the exception of when the owner submits a decreased financial assurance mechanism. Updating financial assurance should generally be conducted with the annual report due by January 15. Updating financial assurance outside of this cycle should only occur if the owner needs to change the type of financial assurance mechanism or permanently terminate the mechanism and should not be used to lower financial assurance during the operating year.

Financial assurance must be terminated in accordance with 30 TAC §37.61. The owner must submit to the executive director a written request to terminate the financial assurance mechanism for the recycling facility and must include documentation that all unrecycled components have been recycled or disposed of and no additional components will be accepted. The executive director may conduct a site inspection to confirm the recycling facility has ceased operations and properly removed unrecycled components. If no issues are noted, the executive director will release the financial assurance mechanism. The owner should terminate the financial assurance only when ceasing operations with no plans on restarting. If an owner has no unrecycled components during a reporting period but plans to continue recycling

operations, the owner may follow the procedures to decrease financial assurance instead of terminating their financial assurance.

For facilities that are required to obtain financial assurance under Subchapter M and financial assurance under another program, the owner may follow the allowances in §37.52. The universal mechanism must be a corporate guarantee, a letter of credit, or a bond, as required under proposed amended §37.931. And the existing financial assurance must cover the cost estimate activities in §328.431(a)(3). Additionally, the owner is still required to submit the annual report, including the cost estimate, and financial assurance documentation, to demonstrate adequate coverage under Subchapter M.

New THSC Chapter 376 is silent on whether the executive director would review and approve financial assurance mechanisms to satisfy the financial assurance requirements. The commission proposes to require cost estimates and financial assurance mechanisms to be reviewed and approved by the executive director, in accordance with the commission's general statutory authority, to provide consistency of financial assurance procedures across programs and to ensure sufficient funding is available in the event the commission must perform closure. The commission specifically solicits comments on the requirement that the executive director review and approve cost estimates, the review and approval described above, and the yearly adjustment processes described above.

Subsection (e) identifies the circumstances under which the owner of a recycling facility subject to Subchapter M is required to perform closure. New THSC Chapter 376 is silent on the circumstances under which the commission may call on the financial assurance. The purpose of financial assurance can only be implemented by making the commission the beneficiary of the

financial assurance and allowing the commission to call on the financial assurance. Therefore, the commission proposes the circumstances under which an owner must perform closure and, if not properly conducted, the commission is authorized to call on the financial assurance in subsection (e). The commission solicits comments on proposed Subsection (e) and the requirements when a recycling facility must perform closure.

The owner's failure to perform closure allows the executive director to call on the financial assurance under §37.101. When an owner has received a written violation from the commission, the owner will have an opportunity to address the violation(s), or receive an order from the commission. If the owner fails to address the violation(s), the owner will be required to perform closure as described in Subchapter M. The violation(s) include: 1) when unrecycled components have been speculatively accumulated; 2) when unrecycled components cause the discharge or imminent threat of discharge of contaminants into or adjacent to the waters in the state; 3) when unrecycled components create or maintain a nuisance; or 4) when unrecycled components endanger the public health and welfare. The owner must also perform closure when directed by the executive director. For the purpose of proposed Subchapter M, the term contaminant is consistent with the definition for "contaminant" in THSC §361.601. Speculative accumulation occurs when unrecycled components accumulate and have no feasible means of being recycled and when at least 75% by weight or volume of the accumulated unrecycled components remain unrecycled for the one-year reporting period.

Subsection (f) authorizes the executive director to receive and spend funds as the beneficiary of the financial assurance provided in accordance with this subchapter. HB 3229 requires the owner of the recycling facility to submit evidence of financial assurance to the agency. New THSC Chapter 376 is silent on whether the executive director may receive and spend funds to

perform closure by removing unrecycled components in the event that the owner of the recycling facility fails to do so. Therefore, the commission proposes subsection (f) in accordance with the commission's general statutory authority and solicits comments on proposed subsection (f).

§328.451, Recordkeeping Requirements

Proposed new §328.451 establishes recordkeeping requirements for owners of recycling facilities subject to Chapter 328, Subchapter M. Under the proposed rule, the owner of a recycling facility is required to maintain records for a minimum of three years in addition to any local, state, or federal recordkeeping requirements. Examples of records include manifests, bills of lading, quantities of components recycled onsite or offsite, waste disposal records, or other documentation used in annual reports submitted to the executive director.

While new THSC Chapter 376 is silent on and does not establish specific recordkeeping requirements, the commission proposes required recordkeeping in accordance with the commission's general statutory authority to ensure recycling facilities maintain accurate and verifiable documentation of recycling and disposal activities. The commission solicits comments on the inclusion and necessity of recordkeeping requirements.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, 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 new 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 and provide financial assurance. The proposed rules implement HB 3229 by establishing the requirements for the submitted report and financial assurance. The reporting requirement and 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 reporting and 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 new rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. The proposed new rules in Chapter 328 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 328 establish reporting and 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. 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 M: REQUIREMENTS FOR RENEWABLE ENERGY COMPONENT RECYCLING
FACILITIES**

§§328.401, 328.411, 328.421, 328.431, 328.441, and 328.451

Statutory Authority

The new rules 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 authority for the management of municipal solid waste; and 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.

§328.401. Purpose.

The purpose of the rules in this subchapter is to establish procedures and requirements for recycling facilities that accept, process, and repurpose components

to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system.

§328.411. Applicability.

(a) This subchapter is applicable to a recycling facility that accepts, processes, and repurposes components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system.

(b) Compliance with provisions of this subchapter does not exempt nor exclude the applicability of other local, state or federal solid waste laws.

§328.421. Definitions.

The following terms, when used in this subchapter, have the following meanings.

(1) Battery energy storage system--A battery energy storage system, including battery cells, racks, containers, inverters, battery management systems, cooling and fire suppression systems, and cables.

(2) Closure--The act, outside of daily operations, of collecting all components accepted from a wind turbine generator, a solar energy device, or a battery energy storage system, including any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility, and properly recycling or disposing of the components.

(3) Owner--The person who has title to the real property on which a recycling facility is located.

(4) Recycling--A process by which components of a wind turbine generator, solar energy device, or battery energy storage system, that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. A use of components that constitutes disposal or that releases contaminants into the environment is not recycling under this subchapter.

(5) Recycling facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the recycling of components from a wind turbine generator, a solar energy device, or a battery energy storage system. The term includes a facility that has accepted or plans to accept unrecycled components for recycling and has not yet ceased operations.

(6) Solar energy device--A solar energy device, as defined by Utilities Code, §185.001, including solar modules, junction boxes, transformers, inverters, racks or trackers, and cables.

(7) Unrecycled components--Components from a wind turbine generator, a solar energy device, or a battery energy storage system that are accepted by the recycling facility for recycling that have not yet been recycled or used as a product. The term includes any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility.

(8) Wind turbine generator--A wind turbine generator, including turbine blades, nacelles, nacelle covers, towers, drivetrains, generators, magnets, power electronics, and cables.

§328.431. Reporting Requirements.

Using forms prescribed by the executive director, the owner of a recycling facility that has accepted unrecycled components for recycling shall submit a report to the executive director no later than January 15 of each year that includes:

(1) an inventory of all unrecycled components;

(2) an estimated timeline for recycling or disposing of the unrecycled components; and

(3) a written cost estimate for hiring a third-party to recycle or dispose of the unrecycled components, prepared by an independent, third-party Texas licensed professional engineer, in current dollars, that includes:

(A) the cost for offsite recycling or disposal of the inventory of unrecycled components, including any fees charged by the destination facility;

(B) the cost for loading unrecycled components into appropriate vehicles for offsite transportation; and

(C) the cost for transporting unrecycled components offsite to an authorized recycling or disposal facility.

§328.441. Financial Assurance Requirements.

(a) Financial assurance required for closure of the recycling facility shall be provided by the owner of the recycling facility in accordance with applicable requirements of Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(b) The owner of the recycling facility shall:

(1) submit with the recycling facility's first report required by §328.431 of this title (relating to Reporting Requirements), evidence of financial assurance in an amount equal to 100 percent of the cost estimate described under §328.431 of this title; and

(2) submit with each subsequent report any additional financial assurance necessary to ensure that the amount of financial assurance the owner has on file with the commission for the recycling facility is at least equal to 100 percent of the cost estimate under §328.431 of this title in the subsequent report.

(c) The financial assurance mechanism used to secure financial assurance in accordance with this section must comply with §37.931 of this title (relating to Financial Assurance Mechanisms).

(d) The executive director will review and approve the cost estimate and financial assurance mechanism provided by the owner. If revisions are required for the executive director to approve, the owner must submit an appropriately revised cost estimate or financial assurance mechanism within timeframes specified by the executive director.

(e) Unless subject to a contrary provision of an order of the commission or an

order of a court of competent jurisdiction, the owner of a recycling facility must perform closure:

(1) when unrecycled components have been speculatively accumulated as established under §328.4 (relating to Limitations on Storage of Recyclable Materials) or §335.17(a)(8) (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials);

(2) if unrecycled components cause the discharge or imminent threat of discharge of a contaminant into or adjacent to waters in the state without specific authorization from the commission;

(3) if unrecycled components create or maintain a nuisance;

(4) if unrecycled components endanger the public health and welfare; or

(5) if directed to perform closure by the executive director.

(f) The executive director is authorized to receive and spend funds as a beneficiary of financial assurance established in this subchapter.

§328.451. Recordkeeping Requirements.

In addition to other applicable recordkeeping requirements under local, state, or federal law, the owner of a recycling facility must maintain records for activities conducted under this subchapter for a minimum of three years including but not limited to manifests, bills of lading, records of quantities of components recycled onsite or offsite, records of waste disposal, and any documentation used to establish the information reported to the executive director under §328.431 (relating to Reporting Requirements). The owner of the recycling facility must furnish to the executive director, upon request and within a reasonable time, records maintained under this section.