By:  Thompson of Brazoria (Senate Sponsor - Hancock) H.B. No. 3060

(In the Senate - Received from the House April 26, 2023; May 2, 2023, read first time and referred to Committee on Natural Resources & Economic Development; May 9, 2023, reported favorably by the following vote: Yeas 7, Nays 0; May 9, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Birdwell        X

Zaffirini                 X

Alvarado        X

Blanco          X

Hancock         X

Hughes          X

Kolkhorst                 X

Miles           X

Sparks          X

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of recycling and recycled products.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 361.003, Health and Safety Code, is amended by amending Subdivisions (1), (10-a), (24-a), (25), (25-a), (26-a), (27), (34), (35), and (36) and adding Subdivisions (1-a), (6-a), and (37-a) to read as follows:

(1)  "Advanced recycling facility" means a manufacturing facility that receives, stores, and converts post-use polymers and recoverable feedstocks using advanced recycling technologies and processes including pyrolysis, gasification, solvolysis, and depolymerization. For purposes of this chapter and rules adopted by the commission under this chapter, an advanced recycling facility is not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.

(1-a)  "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(6-a)  "Depolymerization" means a manufacturing process through which post-use polymers are broken down into:

(A)  smaller molecules, including monomers and oligomers; or

(B)  raw materials or intermediate or final products, including plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings.

(10-a)  "Gasification" means a process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into [~~a~~] valuable raw materials or valuable[~~,~~] intermediate[~~,~~] or final products [~~product~~], including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks [~~a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel~~]. The term does not include incineration.

(24-a)  "Post-use polymers" means plastics that:

(A)  are derived from any industrial, commercial, agricultural, or domestic activity, including preconsumer recovered materials and postconsumer materials;

(B)  are sorted from solid waste and other regulated waste and may contain residual amounts of organic material and incidental contaminants or impurities such as paper labels or metal rings;

(C)  are not mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility;

(D)  are used or intended for use as a feedstock or for the production of feedstocks, raw materials, or other intermediate or final products using advanced recycling; and

(E)  are processed or held prior to processing at an advanced recycling facility [~~plastic polymers that derive from any household, industrial, community, commercial, or other sources of operations or activities that might otherwise become waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris~~].

(25)  "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include:

(A)  pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization; or

(B)  activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(25-a)  "Pyrolysis" means a manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere [~~until melted and thermally decomposed and then cooled, condensed,~~] and the pyrolysis product is converted into [~~a~~] valuable raw materials or valuable[~~,~~] intermediate[~~,~~] or final products [~~product~~], including plastic monomers, chemicals, naphtha, waxes, polymers, or plastic and chemical feedstocks [~~a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel~~]. The term does not include incineration.

(26-a)  "Recoverable feedstock" means one or more of the following materials, derived from recoverable waste other than coal refuse, that has been processed so that it may be used as feedstock in an advanced recycling facility or through [~~a~~] gasification [~~facility~~]:

(A)  post-use polymers; and

(B)  material, including municipal solid waste [~~containing post-use polymers~~] and other post-industrial waste:

(i)  [~~containing post-use polymers, that has been processed into a fuel or feedstock~~] for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 C.F.R. Section 241.3(c); or

(ii)  that the commission or the United States Environmental Protection Agency has otherwise determined are feedstocks and not solid waste.

(27)  "Recycling" has the meaning assigned by Section 361.421 [~~means the legitimate use, reuse, or reclamation of solid waste~~].

(34)  This subdivision expires on delegation of the Resource Conservation and Recovery Act of 1976 authority to the Railroad Commission of Texas.  Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.  The term:

(A)  does not include:

(i)  solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii)  soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii)  waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.); or

(iv)  post-use polymers or recoverable feedstocks processed through pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

(B)  does include hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345.

(35)  This subdivision is effective on delegation of the Resource Conservation and Recovery Act of 1976 authority to the Railroad Commission of Texas.  Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.  The term:

(A)  does not include:

(i)  solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii)  soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii)  waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; or

(iv)  post-use polymers or recoverable feedstocks processed through pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

(B)  does include hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345.

(36)  "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste.  The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.  The term does not include an advanced recycling [~~a pyrolysis or gasification~~] facility.

(37-a)  "Solvolysis" means a manufacturing process through which post-use polymers are purified with the aid of solvents while heated at low temperatures, pressurized, or both heated at low temperatures and pressurized, to remove additives and contaminants and make useful products, including monomers, intermediates, valuable chemicals, plastic and chemical feedstocks, and raw materials. The process includes hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

SECTION 2.  Section 361.0151, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c)  Notwithstanding any other law, the commission or a political subdivision of this state that establishes goals or requirements for recycling or the use of recycled material must base those goals or requirements on the definitions and principles established by Subchapter N. This subsection does not apply to a program described by Subchapter Y or Z.

SECTION 3.  Section 361.041(a), Health and Safety Code, is amended to read as follows:

(a)  The commission may not consider post-use polymers or recoverable feedstock to be solid waste if they are converted using pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization into [~~a~~] valuable raw materials or valuable[~~,~~] intermediate[~~,~~] or final products [~~product~~], including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks [~~a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel~~].

SECTION 4.  Section 361.119(c-1), Health and Safety Code, is amended to read as follows:

(c-1)  A facility that reuses or converts recyclable materials through pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization, and the operations conducted and materials handled at the facility, are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1)  the primary function of the facility is to convert materials into products [~~that have a resale value greater than the cost of converting the materials~~] for subsequent beneficial use; and

(2)  all the solid waste generated from converting the materials is disposed of in a hazardous solid waste management facility or a solid waste facility authorized under this chapter, as appropriate, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

SECTION 5.  Section 361.421, Health and Safety Code, is amended by amending Subdivisions (5), (6), (7), and (8) and adding Subdivision (6-a) to read as follows:

(5)  "Recyclable material" means material that can be or has been recovered or diverted from the [~~solid~~] waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. The term includes any waste stream, including post-use polymers and recoverable feedstocks that are converted through pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization into valuable raw materials or valuable[~~,~~] intermediate[~~,~~] and final products. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6)  "Recycled material" means materials, goods, or products that consist of recovered recyclable material or materials derived from recoverable feedstocks, post-use polymers, postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215. The term includes recycled plastics [~~post-use polymers and recoverable feedstocks used in pyrolysis or gasification~~].

(6-a)  "Recycled plastics" means products that are produced from:

(A)  mechanical recycling of post-use polymers; or

(B)  nonmechanical recycling of recoverable feedstocks or post-use polymers that are certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215.

(7)  "Recycled product" means a product that is eligible to be considered a recycled product under [~~which meets the requirements for recycled material content as prescribed by~~] the rules established by the commission under [~~described in~~] Section 361.427. The term does not include a product sold as fuel.

(8)  "Recycling" means a process by which materials 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 [~~production~~] of new products. The term does not include incineration of plastics or waste-to-energy processes. Recycling includes:

(A)  the composting process if the compost material is put to beneficial reuse as defined by the commission;

(B)  the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations; and

(C)  the conversion of post-use polymers and recoverable feedstocks through pyrolysis, [~~or~~] gasification, solvolysis, or depolymerization.

SECTION 6.  Subchapter N, Chapter 361, Health and Safety Code, is amended by adding Section 361.4215 to read as follows:

Sec. 361.4215.  MASS BALANCE ATTRIBUTION. The commission by rule shall identify third-party certification systems for mass balance attribution that may be used for the purposes of Sections 361.421(6) and (6-a).

SECTION 7.  Sections 361.427(a) and (b), Health and Safety Code, are amended to read as follows:

(a)  The commission, in consultation with the comptroller, shall promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product based on:

(1)  the percent of the total content of a product that consists of recycled material; or

(2)  the portion of the total content of a product that is determined to consist of recycled material according to a third-party certification system for mass balance attribution identified by the commission under Section 361.4215. [~~which specify the percent of the total content of a product which must consist of recycled material for the product to be a "recycled product."~~]

(b)  The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste or post-use polymers.

SECTION 8.  Sections 361.003(10-b) and (25-b), Health and Safety Code, are repealed.

SECTION 9.  As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 10.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

\* \* \* \* \*