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By Opinion Committee at 3:57 pm, Jun 11, 2025

RQ-0602-KP



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June 5th, 2025

Via email to opinion.committee@oag.texas.gov

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Opinion Request Regarding Advanced Recycling in Texas

Dear Honorable Attorney General Paxton:

I write on behalf of Chambers County (the "County") to respectfully request a Texas Attorney General Opinion regarding whether "advanced recycling facilities" engage in "recycling" under Texas law.

Exxon Mobil Corporation ("ExxonMobil") currently operates an advanced recycling facility at its Baytown petrochemical complex near Baytown, Texas, and has recently announced plans to construct advanced recycling facilities in its Beaumont petrochemical complex near Beaumont, Texas. The County is working with ExxonMobil to create local programs to collect and recycle plastics, with the final point of disposition being ExxonMobil's advanced recycling facilities. However, Robert Bonta, the Attorney General of California, and a number of non-governmental entities have, over the course of the last several months, made numerous public statements about ExxonMobil's advanced recycling—claiming that it is "not recycling" and calling it a "myth," a "false promise," and "illegal." These public statements culminated in the filing of two lawsuits against ExxonMobil by the State of California and the NGOs. These lawsuits repeated many of the claims about advanced recycling that Bonta and the NGOs had made during the preceding several months. The lawsuits call into question the status of advanced recycling under Texas law and threaten the County's plans to bring recycling to their cities and counties. As a result, the County seeks your opinion as to whether advanced recycling in Texas in fact constitutes legal recycling under Texas law.

BACKGROUND

I. The County's Collaboration with ExxonMobil

Recently, the County entered into a Memoranda of Understanding (“MOUs”) with ExxonMobil regarding efforts they will undertake to create a plastic-waste collection system within their communities. The communities’ plastic waste will then be delivered to others for sortation and processing and ultimately be recycled by ExxonMobil. The MOU states that parties will work together to increase the volume of residential post-use plastics aggregated for recycling. The purpose of the agreement is to reduce plastic waste in the County, create a cleaner environment, and support a more circular economy for plastics.

ExxonMobil will perform its part of the agreement with the County through advanced recycling, which is carried out through pyrolysis—a form of chemical recycling of plastics referred to in the industry as advanced recycling. The County understands that ExxonMobil’s advanced recycling process involves heating various plastics until they break down into their molecular components. The County understands that since its inception in 2022, the Baytown facility has recycled more than 80,000,000 pounds of plastic waste to create new products, including fuels, lubricants, chemicals, and plastic resins. The County understands that by 2027, ExxonMobil plans to expand its Baytown facility and install advanced recycling in its Beaumont facility to be able to process up to 500 million pounds of plastic waste annually.

The County’s citizens and taxpayers will benefit from the MOU with ExxonMobil by establishing plastics recycling programs in their communities, creating opportunities for cleaner communities, reducing waste sent to landfills, and generating new jobs associated with the operation of ExxonMobil’s facilities.

II. California and Non-Governmental Organizations Sue ExxonMobil

In September 2024, ExxonMobil was sued by the State of California (*ex rel.* Mr. Bonta) and—in a separate but similar lawsuit—by the Sierra Club, Inc., Surfrider Foundation, Inc., Heal the Bay, Inc., and Baykeeper, Inc. for public nuisance, untrue or misleading advertising, and fraudulent business practices related to ExxonMobil’s advanced recycling processes.

These lawsuits make sweeping allegations regarding ExxonMobil’s advanced recycling practices. For example, California alleges that ExxonMobil “created, caused, or assisted in the creation of a nuisance by falsely promising Californians, for almost half a century, that recycling and ‘advanced recycling’ would take care of the ever-increasing amount of plastic waste.” Cal. Compl. ¶ 430. California further alleges that ExxonMobil “misled” the public by claiming that advanced recycling “is a viable, effective, efficient, or scalable method for reducing plastic waste and pollution.” *Id.* ¶ 457(h). And it claims that it is “untruthful” for ExxonMobil to state that advanced recycling and pyrolysis are “legitimate, clean and/or effective plastic recycling process[es].” *Id.* ¶ 460(d).

Similarly, the NGOs accuse ExxonMobil of “greenwashing”—i.e., making false or misleading statements about the environmental benefits of its products or practices. NGO Compl. ¶ 130. They assert that “‘advanced recycling’ is not recycling” at all and is instead “just another

form of incineration” that “can produce significant pollution and energy consumption.” *Id.* ¶¶ 78, 79.

These lawsuits call into question the County’s legal rights and obligations under their MOU with ExxonMobil and also threaten the County’s plans to bring advanced recycling to its community. Thus, the County seeks to clarify the legal status of ExxonMobil’s advanced recycling processes so that the County and ExxonMobil can fully and faithfully perform their contractual obligations and can protect the environment by reducing solid waste.

RELEVANT LAW

I. Texas’s Recycling Policies

Texas policy favors recycling and the advanced recycling practices that the County is contemplating with ExxonMobil.

Various authorities suggest that recycling is consistent with Texas public policy. For example, the Texas Health and Safety Code requires the Texas Commission on Environmental Quality to “work in conjunction with the Texas Department of [Economic Development] to pursue the development of markets for recycled materials, including composting products.” TEX. HEALTH & SAFETY CODE § 316.0151(b).

Further, the Texas Health and Safety Code requires “the commission [to] produce a plan to stimulate the use of recyclable materials as feedstock in processing and manufacturing,” including plastics. *Id.* § 361.0152(c), (a)(3) (including plastic in the definition of recyclable material). And it requires “[t]he commission and the comptroller, on an ongoing basis, [to] jointly: . . . examine and make policy recommendations regarding the need for changes in or the development of the state recycling goal” and to “establish a comprehensive statewide strategy to expand markets for recycled products in Texas.” *Id.* § 361.423(b)(4).

The Texas Administrative Code similarly promotes recycling. *See* 30 TEX. ADMIN. CODE § 328.1 (“The purpose of this chapter is to establish regulations that support the diversion of materials from solid waste streams, to promote the economic recovery and reuse of materials, and to support the development of markets for recycled, remanufactured or environmentally sensitive products or services in a sustainable manner that protects the environment, public health and safety.”); *id.* § 328.6(a) (“It is the state’s goal to achieve the recycling of at least 40% of the state’s total municipal solid waste stream.”).

II. Texas Law on Recycling

Under Texas law, *recycling* is defined as

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 of new products. The term does not include incineration of plastics or waste-to-energy processes. Recycling includes:

...

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

TEX. HEALTH & SAFETY CODE § 361.421(8); *id.* § 361.003(27) (“‘Recycling’ has the meaning assigned by Section 361.421.”); *see also* 30 TEX. ADMIN. CODE § 330.3(129).

Post-use polymers are 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.

TEX. HEALTH & SAFETY CODE § 361.003(24-a); *see also* 30 TEX. ADMIN. CODE § 330.3(118) (similar).

And a *recoverable feedstock* is defined as

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 gasification:

- (A) post-use polymers; and
- (B) material, including municipal solid waste and other post-industrial waste:
 - (i) 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.

TEX. HEALTH & SAFETY CODE § 361.003(26-a); *see also* 30 TEX. ADMIN. CODE § 330.3(127).

Conversely, *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.” TEX. HEALTH & SAFETY CODE § 361.003(34), (35); *see also* 30 TEX. ADMIN. CODE

§ 330.3(151). But solid waste does not include “post-use polymers or recoverable feedstocks processed through pyrolysis, 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.)” TEX. HEALTH & SAFETY CODE § 361.003(35)(A)(iv); *see also* 30 TEX. ADMIN. CODE § 330.3(151)(D).

The Texas Commission on Environmental Quality “may not consider post-use polymers or recoverable feedstock to be solid waste if they are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks.” TEX. HEALTH & SAFETY CODE § 361.041(a).

III. Texas Law on Advanced Recycling

The term *advanced recycling* is not defined in the Texas Health and Safety Code. But the term *advanced recycling facility* is defined as “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.” *Id.* § 361.003(1); *see also* 30 TEX. ADMIN. CODE § 330.3(5) (defining advanced recycling facility); *id.* § 335.1(8) (same). An advanced recycling facility is a “manufacturing facility” and “not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.” TEX. HEALTH & SAFETY CODE § 361.003(1); *see also id.* § 361.003 (“The term [solid waste facility] does not include an advanced recycling facility.”).

The advanced recycling technologies and processes are defined as follows:

Pyrolysis means “a manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere and the pyrolysis product is converted into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, naphtha, waxes, polymers, or plastic and chemical feedstocks. The term does not include incineration.” *Id.* § 361.003(25-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 valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks. The term does not include incineration.” *Id.* § 361.003(10-a).

Solvolysis means: “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.” *Id.* § 361.003(37-a).

And finally, *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,

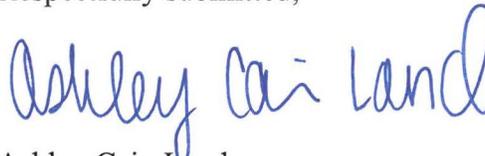
basic and unfinished chemicals, waxes, lubricants, or coatings.” *Id.* § 361.003(6-a); *see also* 30 TEX. ADMIN. CODE § 330.3(39), (60), (124), (153); *id.* § 335.1(50), (76), (143), (162).

REQUEST

The County respectfully requests an Attorney General Opinion on the following question: do “advanced recycling facilities” such as the one operated by ExxonMobil in Baytown and the one contemplated in Beaumont engage in “recycling” under the Texas Health and Safety Code?

Thank you for your consideration of this request. Please let us know if you have any questions or need any additional information.

Respectfully submitted,



Ashley Cain Land

Chambers County Attorney