



## TEXAS CHEMICAL COUNCIL

August 10, 2020

Mr. David Galindo  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
Austin, TX 78753

*Via electronic submission to [David.Galindo@tceq.texas.gov](mailto:David.Galindo@tceq.texas.gov)*

**RE: Written Comments on TCEQ's Proposal for Input on the Language for the Regulation of Plastics in TPDES Permits**

Mr. Galindo,

The Texas Chemical Council ("TCC") appreciates the opportunity to submit these comments on the above-referenced proposal by Texas Commission on Environmental Quality (TCEQ) regarding the language to be used for the future proposal regulating plastics in wastewater permits for manufacturing facilities.

TCC would like to point out that this proposal by TCEQ would create a stringent regulation for a non-hazardous material that would set a precedent exceeding any other state or federal regulation.

TCC represents approximately 70 companies who own or operate more than 200 manufacturing and research facilities across the state of Texas. Our members have invested more than \$150 Billion in physical assets in the state, directly employ more than 75,000 Texans, and indirectly employ over 500,000 Texans. The Texas chemical industry represents the #1 non-energy Texas export with over \$45 Billion in exports annually and pays more than \$1.5 Billion in state and local taxes each year.

TCC provides the following comments on the five questions that TCEQ has requested feedback on.

1. *Please provide input on the following proposed definition of plastic (taking into consideration the focus on pre-production plastic): Plastic means all forms of visible plastic produced, received, or handled at the permittee's facility, including but not limited to: pellets, powder and flakes.*
  - TCC supports the proposed TCEQ definition of "Pellets, powder and flakes." This definition is consistent with the definition used by the American Chemistry Council (ACC) in the Operation Clean Sweep (OCS) stewardship program.
  - TCC recommends removing the phrase "but not limited to." This terminology is open ended and could be interpreted to include post-consumer plastic related debris.

- Suggested language: “Plastic means visible plastic in the form of pellets, powder, or flake produced or handled at the permittee’s facility.”
2. *TCEQ’s intent is to regulate plastics visible to the naked eye, but please provide input on class sizes for our review. Additionally, please provide input on the use of the word “visible” in the definition above.*
- TCC generally supports the term “visible” as a measurement method.
  - Neither the Clean Water Act or the Texas Administrative Code define “visible” but the Merriam Webster dictionary lists “visible” as capable of being seen. If a plastic pellet, flake or powder is able to be distinguished from its surroundings, it would be visible.
  - The definition of “visible to the naked eye” should not specify a class size because a size for a particle to be visible to the human eye depends on the specific individual’s eyesight.
  - Therefore, we would recommend that “visible” be defined with reference to the following definition “visible to the naked eye as able to be seen by an ordinary person under normal observation conditions<sup>1</sup> without special equipment” as defined by Merriam-Webster.
3. *In addition to the prohibition, permittees with stormwater outfalls under the Multi-Sector General Permit or an individual permit will be required to develop a comprehensive set of Best Management Practices to include within their Stormwater Pollution Prevention Plan. Please provide input to assist with the identification of effective BMPs and potential sources of information such as “Operation Clean Sweep.”*
- TCC recommends that this proposal focus on requiring feasible BMPs, similar to the guidelines in OCS practices instead of regulating or prohibiting visible plastics in wastewater discharges.
  - TCC recommends that instead of prescriptive BMPs, flexibility should be provided for each individual permittee to implement BMPs that best fit their situations. TCEQ may consider requiring sites to have a “BMP Plan” that describes the actions they are taking and have implemented.
  - A facility program that includes the following essential elements should be considered equivalent to TCEQ BMP’s:
    - i. Commitment to making pellet, flake and powder loss from plastic production a priority
    - ii. Assessment of pellet, flake, and powder losses and containment needs
    - iii. Implementation of necessary upgrades in facilities and equipment as appropriate
    - iv. Emphasis on employee awareness and accountability in preventing loss
    - v. Ongoing implementation
  - These BMPs for permittees with stormwater outfalls should be developed by the permittee on a case by case basis to control pollution of stormwater as required to maintain compliance with the permit.
  - In the case of an unauthorized discharge, TCC suggests that TCEQ, instead of a violation, allow for a permittee to clean-up the discharged plastics, and require a facility to perform a root cause analysis to determine what failed and improve their BMPs.

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<sup>1</sup> Normal observation conditions may be specified in the facility’s permit, if needed.

TCEQ should be empowered to use a bi-lateral compliance agreement or other mechanisms in lieu of an enforcement action where appropriate.

- Finally, if TCEQ revises the aesthetic requirements specified in 30 TAC 307 or the standard permit conditions as they apply to plastics, then facilities should be provided a reasonable amount of time to evaluate and implement the required BMPs to achieve the revised requirements.
4. *Please provide input on additional requirements such as: outfall and receiving water inspections, notification of spills and unauthorized discharges to Regional Office, recovery of released materials from receiving waters, and clarification that the point of compliance for the prohibition on the discharge of plastic is at the final outfall.*
- **Outfall and Receiving Water Inspections:**
    - i. TCC recommends that TCEQ clarify that these inspections will be done by the permittee and not TCEQ or a third party.
    - ii. TCC recommends that TCEQ specify the outfall observation points for inspection. Currently, the physical accessibility to perform outfall and receiving water inspection is not always readily accessible, especially when discharging straight to a large receiving body. Land access to perform these proposed inspections does not exist. It is important to consider a safe access point for outfall and receiving water inspection for personnel.
    - iii. TCC recommends that TCEQ clarify in guidance how historical vs. recently discharged plastics will be determined. Even with rigorous sampling and controls, material historically accumulated in sediments that is disturbed during a heavy rain event may be classified incorrectly during an inspection.
    - iv. TCC recommends that TCEQ include language regarding the proximity to an outfall for determining when not in compliance. Without this clarification it may be hard to determine the actual source of the discharge.
    - v. Reporting should exclude the amount of recoverable plastics which are removed from the environment as the result of programmatic activities.
  - **Notification of spills and unauthorized discharges to Regional Office:**
    - i. TCC recommends that TCEQ should not impose additional notification requirements of unauthorized discharges.
    - ii. Permittees should be provided the ability to operate their plastic control equipment collectively to prevent plastic discharges into the off-site receiving water.
    - iii. If plastics are seen to be released into the off-site receiving water, permittees should be provided the opportunity to clean-up the release without additional notification.
    - iv. TCEQ could model this after the “Find-it & Fix-it” program that TCEQ already has for excessive emissions detected by the TCEQ IR camera campaigns.
    - v. As stated above, if plastics are seen to be released into the off-site receiving water, permittees should be provided the opportunity to clean-up the release in a specified timeframe without additional notification.
    - vi. TCC suggests that TCEQ consider some form of allowance for extreme weather (e.g., tropical storms, floods, etc.). Additional time for inspection and other actions may be necessary following extreme weather events.

- Clarification that the point of compliance for the prohibition on the discharge of plastic is at the final outfall
  - i. TCC agrees that the point of compliance should be at the final external outfall or offsite receiving water as specified in the permit.
  - ii. The regulated community has concerns that this point of compliance may be interpreted differently from Region to Region and Investigator to Investigator. TCC recommends that TCEQ clarify in guidance that the point of compliance for the prohibition on the discharge of plastic is at the final external outfall or off-site receiving water as specified in the TPDES permit.
  - iii. TCC recommends clarification in guidance regarding internal outfalls within a facility and internal outfalls that lead to a co-located shared stormwater system. TCC recommends that internal outfalls and stormwater ditches should not be considered “releases” to the environment, allowing for the implementation of capture and recovery systems between internal and final outfalls.
  - iv. TCC also recommends that TCEQ clarify in guidance that features such as treatment ponds, stormwater retention ponds, stormwater ditches etc. are not considered a “Water in the State” when inside of the boundary of a facility.
    - 1. This guidance should clarify the categorization of features that should not be considered as a “release to the environment” until after the final external outfall or off-site receiving water body.

5. *TCEQ is requesting stakeholder input regarding additional time to comply with the prohibition on the discharge of plastic. The Texas Surface Water Quality Standards allow up to a three-year compliance period. TCEQ is proposing that requests for a compliance period must justify the need for additional time including a construction schedule to install new control structures or retrofitting existing systems to achieve compliance. If approved, the compliance period will include submission of quarterly progress reports.*

- TCC recommends that TCEQ consider a five-year compliance period, consistent with a TPDES renewal cycle, for existing facilities where it may be justified by a permittee to install or modify control structures.
- TCC recommends that TCEQ allow for at least a one-year compliance period after commencement of normal operation of a new or modified facility.
- TCC supports semi-annual compliance progress reports in both of these cases.
- TCC suggests that TCEQ consider case-by-case extension for this compliance period when justified as it will take facilities time to upgrade existing technologies and install new technologies as applicable. Given the potential construction necessary to implement the changes, the Director should be provided the flexibility to consider other regulatory constraints when establishing the facility’s site-specific compliance schedule.
- TCC recommends that TCEQ clarify in guidance what justification will be necessary for allowance of this compliance period, extension of the compliance period, and what will be necessary for inclusion in compliance progress reports.
- TCC recommends that the agency allow sites to designate a part(s) of the progress reports as “Confidential” if it involves proprietary technology or production equipment installation or replacement (rotary valves, filters, pneumatic conveying systems, silos, etc.)

- TCC supports TCEQ's proposal to use the minor amendment process to make these changes in the wastewater permits as that is the most efficient and quickest way to make the proposed changes.

In addition to the responses above, TCC recommends that organic chemical manufacturing facilities that do not manufacture plastic resin pellets not be covered by these requirements. Organic chemical manufacturing, as a category, is not appropriate with respect to discrete requirements that address plastic resin pellets. Many organic chemical manufacturers make only chemicals, and do not polymerize them (e.g., manufacture plastic). We therefore urge TCEQ to identify plastic resin production facilities with specificity such as NAICS/SIC codes, and apply these targeted requirements to only these facilities. Otherwise, the state would impose permitting restrictions on facilities where pellets are not present. TCC also supports TCEQ's efforts on the development of investigator guidance on plastics to provide consistency across TCEQ Regions.

TCC appreciates the opportunity to comment on this proposal. If you have any questions, please do not hesitate to contact me at (512) 646-6400 or [gammage@texaschemistry.org](mailto:gammage@texaschemistry.org).

Sincerely,

Sam Gammage, General Counsel  
Texas Chemical Council