



**J. WILLIAM OSWALD**  
Regional Manager  
State Government Affairs  
701 Brazos Street, Suite 650  
Austin, TX 78701

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**

Dear Mr. Galindo,

Koch Industries ("Koch") appreciates the opportunity to comment on the Texas Commission on Environmental Quality's (TCEQ) proposed discharge prohibition on pre-consumer plastic pellets, flakes and powder that was introduced at the June 30, 2020 Standards Implementation Stakeholder meeting. Koch submits the following comments on TCEQ's topics one, two and four as set out in the agency's request for input.

- 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.***

The term "visible" is overly subjective and lends itself to varying degrees of interpretation depending on the perspective of the observer. Instead of "visible", TCEQ should consider a more objective standard such as "plastic in its final form" (i.e., in the form shipped to the customer or in the form before the material is used to produce the final product). The term "powder" is also overly subjective. There are other materials in the environment (e.g., naturally occurring dust, pollen, etc.) that can be mistakenly identified as plastic "powder" at a compliance point. Powder should be encompassed by "plastic in its final form". TCEQ should also consider utilizing a pellet and flake size reference that would help to distinguish between pre-production (primary) plastic and post-production (secondary) plastic related debris, e.g., whole or pieces of bags, bottles, straws, etc.

- 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.***

Plastics should not be regulated based on visibility to the naked eye. The term "visible" is subjective as described in the above comment. A more precise, measurable means to identify the presence of plastics should be used if there is an expectation to comply with a certain limit or standard. An objective, numeric standard, similar to numeric standards for other regulated pollutants should be

used. Options to consider include: (1) a mass-based limit; (2) a tiered pellet/flake count approach; and (3) a surface area coverage standard. A single option or a combination of options could be utilized depending on the nature of the product or the site's discharges or unique site characteristics. An objective standard will benefit the regulated community by providing clear compliance expectations consistent with other regulated pollutants. An objective standard also benefits TCEQ inspectors that are tasked with assessing compliance ultimately resulting in a more defensible enforcement position. In addition, the general public benefits from an objective standard by knowing industry is being held to a measurable standard.

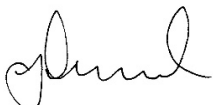
Further, Koch interprets TCEQ's proposed discharge prohibition to essentially be a zero allowable discharge limit. With a zero discharge limit, the mere presence of a single pellet, flake or powder particle at the compliance point would be a violation. Koch strongly objects to such a standard. TCEQ is aware that wastewater permits contain numeric limits on the discharge of many pollutants. Even permitted discharges of certain pollutants deemed toxic, such as benzene and mercury, comply with numeric discharge permit limits rather than a complete and absolute zero discharge prohibition. As noted above, a discharge prohibition on plastics will result in unintended and overly burdensome consequences for the regulated community and TCEQ. Similar to other regulated pollutants, TCEQ should collect data and perform a scientific assessment to better understand the potential for plastic pellets, flakes and powder to endanger human health, or safety, or the environment in order to establish an appropriate discharge limit.

- 3. 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.***

The point of compliance should be at the final outfall. Any structures, conveyance systems, etc., upstream of the outfall compliance point should be considered part of the controls and/or subject to application of controls. The permit should contain an objective, measurable discharge limit (as set out in the comments above) and appropriate notification requirements for permit exceedances would be made via monthly discharge monitoring reporting only. Koch recommends that whatever approach is implemented, that the permit contain only a reporting requirement for the first 3-5 years to collect data that could eventually be used to establish objective, representative permit limits. Until a thorough scientific assessment of reportable data is complete, no discharge limitation should be set.

If you have any questions regarding these comments, please let me know. My contact information is 512-476-1148 / [bill.oswald@kochps.com](mailto:bill.oswald@kochps.com).

Sincerely,



Bill Oswald  
Koch Companies Public Sector