

From: Coastal Bend Vice Chair <vicechair@coastalbend.surfrider.org>  
Sent: Tuesday, August 4, 2020 4:28 PM  
To: IPCOMMNT  
Subject: Comment on Proposed Changes Regarding Preproduction Plastics

To Whom It May Concern:

The Surfrider Foundation (“Surfrider”) is a national non-profit organization dedicated to the protection and enjoyment of the world’s oceans, waves and beaches, for all people, through a powerful activist network. The Texas Coastal Bend Chapter, South Texas Chapter, Central Texas Chapter, Galveston Chapter, and Texas Upper Coast Chapter of the Surfrider Foundation work to advance this mission in the state of Texas. As keepers of the coast, we have become increasingly concerned about the impacts of plastic pollution on marine animals as small as crabs and oysters to larger species like sea turtles, dolphins and whales.

In 2010, Surfrider’s national headquarters launched the Rise Above Plastics program due to the prevalence of plastics found during beach cleanups. The Texas Coastal Bend Chapter decided to call our local version of this program Skip the Plastic. Over the last 10 years, we have worked to bring attention to the problem of plastic pollution in Texas waters and on Texas shorelines, and to advocate for solutions to the problem. Scientific evidence showing the extent of the problem in Texas has grown dramatically in that time, including studies that have documented the ingestion of plastics by a variety of marine species and nurdlepatrol.org, which has mapped widespread pollution of preproduction plastics along the Gulf Coast.

Surfrider appreciates the opportunity to comment on the Texas Commission on Environmental Quality (“TCEQ”)’s proposed changes in the permitting and enforcement of plastics manufacturing and processing facilities. These comments were drafted in large part with the input of one of our chapter leaders with 15+ years of experience in stormwater compliance at a variety of industrial facilities. This experience includes preparing permit applications, development of stormwater pollution prevention plans (“SWPPPs”), design and implementation of best management practices (“BMPs”), conducting employee training, performing periodic inspections, and routine monitoring and reporting.

Surfrider advocates for the following changes to the regulatory standards and implementation procedures proposed by TCEQ:

\* TCEQ should update the Industrial Wastewater Permit Application (TCEQ 10055), 30

TAC Ch. 307 for individual stormwater permits and the Multi-Sector General Permit, and Investigator Guidance to clarify that TPDES permits do not authorize any amount of plastic pellets, flakes, fluff and powder to be discharged into receiving waters.

\* In addition to plastics manufacturing and processing facilities, the requirements should apply to all transporters, bulk terminal operators and recycling facilities that handle, transport or dispose of preproduction plastics.

\* The term “visible” should not be included in the definition of plastic. Micro- and nanoplastics too small to be visible with the naked eye have been proven by numerous scientific studies to be harmful to the environment and human health. There is currently not enough research and data on microplastics, but we know that plastics can cause negative human health impacts including DNA damage, endocrine disruption, cancer, and diabetes when ingested. TCEQ should regulate the discharge of all plastics less than 5 millimeters in size, including pellets, flakes, fluff and powder, regardless of whether they sink or float in water.

\* Just as source reduction and waste prevention play a role in meeting the requirements of the Waste Reduction Policy Act (WRPA), they can play a role in preventing discharges and releases of preproduction plastics. Where applicable, facilities can apply these processes to prevent plastics from entering stormwater and wastewater systems.

\* BMPs incorporated into regulatory requirements should include good housekeeping and spill prevention procedures, containment systems at all storm drain discharge locations, sealed containers for storage and transport of preproduction plastic pellets, powders and flakes, capture devices and vacuum systems at loading and unloading locations, and regular inspections of the workplace, especially at loading and unloading areas. The Operation Clean Sweep manual is a good resource for specific BMPs. Finally, TCEQ should periodically incorporate new BMPs into regulatory requirements that reflect updates in science and technology, or advances in detection and treatment technologies.

\* Structural BMPs must be capable of capturing and keeping all plastics on facility properties during the heavy rain events that occur in Texas. As the effects of climate change have grown, the frequency of 100 year storms has increased along the coast. To that end, BMPs must be designed to manage the stormwater flows and waste loads in a 100 year, 24-hour rain event – see [noaa.gov/pub/hdsc/data/tx/tx100y24h.pdf](https://www.noaa.gov/pub/hdsc/data/tx/tx100y24h.pdf)

\* Structural BMPs are effective only when they are kept in working order. Therefore, TCEQ should

require that SWPPPs include a written maintenance program and schedule to ensure that BMPs are in working order when rain events occur.

\* The success of a BMP program largely depends on a robust employee training program. Everyone at a facility, from managers to plant floor employees, must receive the training. The program must be tailored to properly explain the reasons for, and proper operation and upkeep of, BMPs and must address the specific operating conditions of the site. For the plant floor employees, the training should be done in a hands-on manner with the actual BMPs. Bringing employees into a meeting room once a year, showing them a 15-minute video and having them sign a training log will not adequately ensure that the BMPs will be used and maintained correctly, or that the receiving waters will be protected.

\* The point of compliance for the prohibition on the discharge of plastics should be the final discharge point or outfall gate. If the discharge enters a water in the State prior to exiting the property, the point of compliance must be located prior to entering a water in the State. Treatment units such as settling ponds that are located within the property and upstream of the final discharge point or outfall gate should not be considered water in the State, but should be subject to regulation as a point-source.

\* Monthly monitoring should be done at least 50 feet from all outfalls, and within 8 hours of each

rain event producing 2 or more inches of rainfall. If a discharge or release of plastics is detected,

a written report must be submitted to TCEQ within 2 working days. The report must contain photos and a GPS location of the discharge or release, and an estimate of the quantity of plastics

discharged or released. If a cleanup has been done, the report must include photos, the quantity

of plastics cleaned up, the current location of those plastics, the type of plastics and an estimate

of the amount of plastics that have not been collected. These reports should be publicly available.

\* If no discharge or release of plastics is detected in a given month, the facility must document the conditions in monthly reports that are publicly accessible. Facilities should be required to attest in the reports that no outfall gates have leaked, and that water has not circumnavigated the outfall gates.

\* The usual three-year compliance period allowed by the Texas Surface Water Quality Standards is too long to provide meaningful protections for Texas waters. Based on data

from nurdlepatrol.org, the amount of contamination that will occur in 3 years is unacceptable. The compliance period should instead be 1 year. Any facilities requesting a compliance period of more than 1 year must justify the need for additional time including a construction schedule to install new control structures or retrofitting existing systems to achieve compliance. When considering such requests, TCEQ must consider the facility's compliance history. If approved, the compliance period needs to include submission of quarterly progress reports.

\* The University of Texas Marine Science Institute and Texas A&M University - Corpus Christi possess new scientific equipment that facilitates "fingerprinting" of plastics to determine the source. TCEQ should require all plastics manufacturers to submit examples of the plastics made at their facilities to enable identification of discharged or released plastics during an enforcement investigation. This would increase the reliability of the fingerprinting tool and level the playing field for the careful producers.

\* TCEQ must inspect a facility before granting an applicant's Conditional No Exposure Exclusion.

This applies especially to smaller facilities that want to fly under the radar. In real world situations, most of these facilities will have plastic materials and equipment that are exposed to rainfall. Over time, an exclusion gives the impression to plant floor managers and employees that their business has a free pass from TCEQ, and little or no effort will be made to prevent plastics, oils and industrial chemicals from going down the storm drain.

\* TCEQ should have the authority to reopen permits during the current permit term to include additional requirements under the staff-initiated minor amendment process.

\* Penalties issued for violations of the discharge prohibition must be large enough to deter future violations. TCEQ must consider the wealth and size of a violator when calculating the penalty.

Sincerely,

Neil McQueen  
Vice Chair - Texas Coastal Bend Chapter, Surfrider Foundation  
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