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Mr. David Galindo
Director, Water Quality Division
Texas Commission on Environmental Quality
MC 145
P.O. Box 13807
Austin, TX 78711-3087

Re: The Texas Commission on Environmental Quality's Request for Stakeholder
Input Regarding Plastics Proposal

Dear Mr. Galindo:

The Texas Industry Project (“TIP”) appreciates the opportunity to participate in the Texas Commission on Environmental Quality’s (“TCEQ”) stakeholder process regarding TCEQ’s proposal to specifically address the regulation of plastic pellets entering receiving waters from “facilities which handle plastic resin pellets generated at organic chemical manufacturing facilities, or packaged and transported to processors for molding into plastic products.” As we understand it, TCEQ is proposing to revise the Texas Surface Water Quality Standards and its regulation of the discharge of plastic pellets, powder, and flakes in wastewater permits. TCEQ has also proposed to require a comprehensive set of Best Management Practices (“BMPs”) for visible plastics at such facilities to include within the Stormwater Pollution Prevention Plan where stormwater outfalls are authorized under the Multi-Sector General Permit (“MSGP”) or an individual permit.

TIP is composed of 61 companies in the chemical, refining, oil and gas, electronics, forest products, terminal, electric utility, transportation, and national defense industries with operations in Texas. Many member companies hold Texas Pollutant Discharge Elimination System (“TPDES”) permits or have coverage under the MSGP and thus could be affected by TCEQ’s proposals. TIP thanks TCEQ for engaging in a stakeholder process as it considers development and implementation of water quality standard revisions and permit conditions specifically addressing plastics. Given the shared goals but real-world challenges involved, TIP encourages TCEQ to continue to engage in a robust stakeholder process as it moves forward with its proposals.

TIP supports and adopts the comments submitted by the Texas Chemical Council (“TCC”) on this proposal and urges TCEQ to give those comments serious consideration. TIP also offers the following comments for your consideration.

First, it is essential that the types of facilities that could be subject to these proposals are clearly described so that this stakeholder process garners the appropriate attention and input. This clarity could be by reference to relevant chapters or subchapters of the Effluent Limitation Guidelines or potentially NAICS/SIC codes. For example, TCEQ has not expressed any intent, and we do not understand this proposal, to reach organic chemical facilities that do not manufacture preproduction plastic resin (pellets, powder, or flakes) nor to reach facilities where the use of end-products may result in the generation of residuals that could meet the definition of plastic. To the extent these proposals will reach facilities involved in the transport and ultimate processing of the plastic resins for molding into plastic products, additional outreach may be appropriate as the focus of the issue has been largely centered on the chemical manufacturing facilities.

With respect to the specific questions posed by TCEQ, TIP would like to highlight the following points, consistent with the TCC comments:

- TIP strongly supports TCEQ’s proposal for a “visible” standard using the naked eye, without any artificial magnification.
- With a definition encompassing pellets, powder, and flakes, TCEQ should recognize and affirmatively acknowledge that there are meaningful differences between pellets, powder, and flakes with respect to the practicality, implementation, and ultimate achievability of measures to comply with a prohibition on discharge for each category. TIP believes that these issues could pose significant challenges for compliance that should not be disregarded and should feed into appropriate timelines and expectations.
- With respect to stormwater discharges, TIP suggests that TCEQ allow for a flexible approach to BMPs due to the varying nature of facilities that could potentially be affected by these proposals. TIP believes that a flexible, less prescriptive approach to BMPs will ensure that the BMPs are effective and appropriate to address plastics at each individual facility. The approach to stormwater should allow that any inadequacies identified in BMPs can be remedied through prompt analysis and adjustment to or addition of BMPs.
- With respect to notification of spills and/or unauthorized discharges, TIP believes that if a spill or unauthorized discharge of visible plastic is remedied within a reasonable time (in which case there is no impact to the environment), then notification to the Regional Office should not be required. The administrative burdens to facilities as well as to TCEQ associated with such notification are not justified given the lack of lasting impact and the ability to address such matters through record retention and review. If TCEQ does ultimately require notification for off-site impacts to the environment, then TCEQ should be clear and specific regarding when those notifications will be required, the time frame for such notifications, and to whom notification will be required.

- In the development of guidance regarding enforcement, clarity and consistency are key to the regulated community. In addition, TCEQ should recognize the distinction between a new discharge from the final outfall and the potential for the appearance of visible plastics near outfalls in connection with historic releases, potentially from other sources, and storm events. This nuanced and real-world perspective is essential to a rational path forward to define appropriate compliance tools on a going-forward basis.
- TIP strongly supports TCEQ's proposal that the point of compliance for the discharge of plastics is the final outfall at the receiving water in the state. TCEQ should carry forward with this recognition of the need for flexibility to craft solutions upstream of the final outfall, including the use of internal conveyances for settling or other purposes, regardless of whether sampling points for other parameters are located upstream of the final outfall at the receiving water in the state.
- TIP strongly supports TCEQ's proposal to allow for, with appropriate justification, a compliance period. While there is a shared goal to address visible plastics as proposed, it is essential to allow enough time for facilities to put into place any necessary control recovery systems or to retrofit existing systems in order to achieve compliance. Additional time to implement recovery systems or retrofit existing systems is a heightened and critical concern due to the challenges and differences in implementation of controls for pellets, powder, and flakes.
- TIP strongly supports TCEQ's proposal to use the minor amendment process to make changes in the wastewater permits for provisions developed through TCEQ's pending process, as that is the most efficient and appropriate tool.

As TCEQ refines its proposals, TIP would appreciate further opportunities to engage in the stakeholder process. Thank you for your time and consideration of these comments.

Respectfully,



Paulina Williams
on behalf of the Texas Industry Project

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