

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
FORMOSA UTILITY VENTURE,	§	TEXAS COMMISSION ON
LTD. AND FORMOSA PLASTICS	§	
CORPORATION, TEXAS	§	
RN100218973	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2017-0737-IWD-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS (the "Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents presented this Order to the Commission.

The Respondents understand that they have certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondents agree to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondents.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondents own and operate a manufacturing facility located at 201 Formosa Drive, one mile north of the intersection of State Highway 35 and Farm-to-Market Road 1593, northeast of Point Comfort, Calhoun County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During a record review conducted on April 4, 2017, an investigator documented that:
 - a. Plastic pellets were discharged from Outfall Nos. 006, 008, and 009 and were observed floating in Cox Creek and embedded in the creek's sediment.
 - b. The Hach Chemical Oxygen Demand Method 8000 analysis was performed with a chloride concentration greater than 2,000 milligrams per liter ("mg/L"), when

the chloride maximum concentration limit for the method is 2,000 mg/L for non-diluted samples and 1,000 mg/L for diluted samples.

3. The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:
 - a. By June 29, 2017, collected and properly disposed of approximately 112,000 pounds of debris and plastic pellets from Lavaca Bay, and approximately 327,000 pounds of debris and plastic pellets from Cox Creek; and
 - b. By July 31, 2017, determined the potential sources of the plastic pellets and implemented a pellet recovery system to minimize future discharges of solids, including plastic pellets from the Facility by installing a cone filter, floating booms, wedge and gate screens, and gabions.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondents failed to prevent the discharge of solids in other than trace amounts into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0002436000, Effluent Limitations and Monitoring Requirements No. 3, Outfall Nos. 006, 008, and 009.
3. As evidenced by Finding of Fact No. 2.b, the Respondents failed to properly analyze effluent samples, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.11(c) and TPDES Permit No. WQ0002436000, Monitoring and Reporting Requirements No. 2.a.
4. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondents for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of \$121,875 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondents paid the \$121,875 penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondents are assessed a penalty as set forth in Conclusion of Law No. 5 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondents' compliance with all the requirements set forth in this Order resolve only

the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: FORMOSA UTILITY VENTURE, LTD. and FORMOSA PLASTICS CORPORATION, TEXAS, Docket No. 2017-0737-IWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondents are jointly and severally liable for the violations documented in this Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Order.
3. The Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, implement a method to properly analyze effluent samples for chemical oxygen demand at the Facility.
 - b. Within 45 days after the effective date of this Order, submit written notification of compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.e.
 - c. Within 60 days after the effective date of this Order and on a semi-annual basis thereafter, conduct a comprehensive evaluation of the Facility, Cox Creek, and Lavaca Bay, and remove and properly dispose of any discharged solids, including plastic pellets found during the evaluation of Cox Creek or Lavaca Bay and any pellet loss found during the evaluation of the Facility. Document the evaluation of each location and the resulting removal and disposal of any discharged solids, including plastic pellets. Ensure that all records of the evaluations and resulting removal and disposal are maintained at the Facility and made readily available for review upon request.
 - d. Within 75 days after the effective date of this Order and on a semi-annual basis thereafter, submit written certification of compliance with Ordering Provision No. 3.c, in accordance with Ordering Provision No. 3.e.
 - e. The written certification of compliance required by Ordering Provision Nos. 3.b and 3.d shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be signed by the Respondents and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5839

4. All relief not expressly granted in this Order is denied.
5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If the Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.

8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. This Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
11. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
12. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



5/24/18

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

03/16/18
Date

Rick Crabtree
Name (Printed or typed)
Authorized Representative of
FORMOSA UTILITY VENTURE, LTD.

VP / GM
Title

If mailing address has changed, please check this box and provide the new address below:


Signature

03/16/18
Date

Rick Crabtree
Name (Printed or typed)
Authorized Representative of
FORMOSA PLASTICS CORPORATION, TEXAS

VP / GM
Title

If mailing address has changed, please check this box and provide the new address below:

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.