

# TEXAS COMPANY AGREES TO PAY \$50 MILLION AND ELIMINATE DISCHARGES OF PLASTICS

Formosa Plastics Corp., Texas agreed to pay \$50 million in mitigation payments and eliminate discharges of plastics from its manufacturing facility in Port Comfort, Texas as a settlement in a Clean Water Act (CWA) citizen's suit, *San Antonio Bay Estuarine Waterkeeper v. Formosa Plastics Corp., Texas*. The settlement is in a proposed Consent Decree, which the judge must approve to become final, in a suit alleging numerous CWA violations by Formosa.



## **\$50 Million for Mitigation**

The proposed Decree requires Formosa to pay \$10 million per year for five years to the Matagorda Bay Restoration Trust, which will use the money for a variety of restoration projects, including:

1. \$20 million for revitalizing and restoring ecosystems in the Matagorda and San Antonio Bay systems to promote sustainable fishing, shrimping, and oystering;
2. \$10 million to Calhoun County for a park at Green Lake and to restore Green Lake to its historical condition, including repair of damage caused by Hurricane Harvey;
3. \$750,000 to the local YMCA for children's camps focusing on environmental stewardship;
4. \$2 million to Calhoun County for erosion control and restoration at Magnolia Beach;
5. \$1 million to the Mission-Aransas National Estuarine Research Reserve to support a patrol that documents the discharge of plastics on the Gulf Shore;
6. \$5 million to fund research projects to determine environmental degradation in the region; and
7. an additional \$11.25 million for additional research, educational programs, advocacy activities other than litigation, habitat restoration, or expansion of any of the efforts described in 1-6, as determined by the Trust's Award Committee.

## **Plastic Prohibited in Future Discharges; Upgrades to Drainage System**

The proposed Decree also requires Formosa to ask the Texas Commission on Environmental Quality to revise its water discharge permit to:

1. prohibit discharge of any visible plastic pellets, flakes, or powder;
2. define the total suspended solids that may be discharged to exclude any plastic pellets, flakes, or powder; and
3. require upgrades to the facility's drainage system to prevent flooding except due to a storm more severe than a 5-year 24 hour event.

## **Stipulated Penalties, Assessment for Attorneys' Fees, Independent Engineering Firm**

The proposed Decree includes a stipulated penalties provision for future CWA violations and requires Formosa to pay over \$3 million for its opponents' attorneys' fees. It also requires Formosa to hire an independent engineering firm, subject to the approval of those who filed the suit, to assist in the design and implementation of the upgrades necessary to comply with the Decree.

## **EPA Must Receive Notice of the Settlement**

The CWA requires notice to EPA at least 45 days before the judge can approve the Consent Decree. EPA may submit comments. When a CWA citizen's suit settlement includes payment of a "penalty," that portion is to go to the United States Treasury; this settlement calls for no payment to the Treasury. EPA often objects to settlements that have no "penalty" component.

Given the size of the settlement and the proposed uses of the settlement funds, EPA may object in its comments to the settlement, arguing some portion should go to the Treasury and some of the proposed uses are not "mitigation." Even when EPA objects, courts generally have wide discretion to approve settlements in these cases.