



FOR IMMEDIATE RELEASE

March 6, 2019

Contact:

Diane Wilson, 361-218-2353; wilsonalamobay@aol.com

Nancy Nusser, Press Officer, TRLA, 512-374-2764 or 419-934-9588; nnusser@trla.org

Formosa Faces March Trial for Dumping Plastic into Texas Bay

VICTORIA, Texas – A lawsuit filed by Texas residents against Formosa Plastics for dumping up to millions of pounds of plastic pellets into the state’s Lavaca Bay and nearby waterways will go to trial on March 25. The plaintiffs are seeking as much as \$179 million in penalties – the maximum amount permitted under the federal Clean Water Act.

“Formosa has dumped billions and billions of plastic pellets into the water,” said Diane Wilson, a former shrimper who is represented in the suit by Texas RioGrande Legal Aid (TRLA). “This garbage threatens fish, birds, endangered species, and the people who rely on the natural environment here.”

Wilson and her co-plaintiffs, members of the San Antonio Bay Estuarine Waterkeepers, filed suit in July 2017 against Formosa Plastics, Texas, a subsidiary of Formosa Plastics Corporation USA, which operates the Point Comfort facility near Lavaca Bay. Since Jan. 31, 2016, Wilson and her co-plaintiffs – represented by Corpus Christi trial lawyer David Bright and Austin environmental attorney David Frederick – collected about 2,400 samples of the plastic pellets and powders that Formosa discharges into Lavaca Bay and the nearby Cox Creek. The samples, as well as photos and video, document violations of Texas law and the Clean Water Act and will be used as evidence at the March trial in federal court in Victoria, Texas.

Jeremy Conkle, an assistant professor of environmental chemistry at Texas A&M University, has calculated the amount of plastic pellet discharge that Formosa has cleaned up through early

February 2019. Using cleanup estimates from Formosa's contractor, Conkle estimates that since April 2017, crews have removed between 341,000 to 3.4 million pounds of plastic debris. These figures do not account for the massive amount of plastic still in the environment from ongoing illegal dumping or the amount discharged before 2017. In 2010, the EPA warned Formosa that its plastic discharge violated the Clean Water Act.

"When I first saw the extent of plastic pellets and powder in Lavaca Bay and Cox Creek, I was in disbelief," Conkle said. "It has now been over a year and the cleanup efforts appear as if they haven't made a dent in the number of pellets and powder I've recently seen in these systems."

The TCEQ in January fined Formosa \$112,000 for six pollution events; under Formosa's stormwater discharge permit, it is not supposed to discharge "floating solids" in anything other than "trace amounts." The pollution events were brought to the TCEQ's attention by Wilson and her co-plaintiffs.

Plaintiffs will argue in court that Formosa should be fined for all of its illegal discharge – not just six pollution events. They will ask for up to \$179 million in fines, the maximum penalty under the Clean Water Act for 1,130 continuous days of discharges and for the company's failure to report the violations to TCEQ, as required by law.

"Because TCEQ's investigation was so limited, it only fined Formosa for a handful of pollution events," Wilson said. "Formosa won't even notice that fine (Formosa reported \$900 million in net income in 2017). She pointed out that in February, weeks after the January fine, she and other plaintiffs were still finding pellets and powder in and around Lavaca Bay and Cox Creek. "The company is still violating the law. It hasn't made the changes it needs to make," Wilson said.

Josh Kratka, a senior attorney at the National Environmental Law Center (NELC), says penalties must be significant enough to compel compliance on the part of illegal polluters.

"One of the reasons citizen enforcement suits under the Clean Water Act rarely go all the way to trial is that, in cases like this one where the evidence of liability appears overwhelming, a defendant faces a substantial risk of being assessed a large civil penalty and a court order requiring significant changes to its pollution control systems," said Kratka, a senior attorney at NELC, which recently obtained a court-ordered \$20 million penalty against ExxonMobil Corp. after a trial in the Southern District of Texas to enforce the Clean Air Act.

"This lawsuit, and the citizens' willingness to take it to trial, sends a powerful message to Formosa and to other companies who don't take seriously their obligation to comply with the Clean Water Act," Kratka said.

Established in 1970, Texas RioGrande Legal Aid, Inc. (TRLA) is a nonprofit organization that provides free legal services to about 23,000 low-income Texans in 68 counties. TRLA's mission is to promote the dignity, self-sufficiency, safety and access to justice for low-income Texans by providing high-quality legal assistance and related educational services.

