

TCEQ DOCKET NO. 2006-1572-MWD

IN RE: APPLICATION BY
MARLIN ATLANTIS WHITE, LTD.
FOR PERMIT NO. WQ0014570001

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

2007 JUL -2 PM 3:12
CHIEF CLERKS OFFICE

APPLICANT'S SUPPLEMENT TO RESPONSE TO HEARING REQUESTS

TO THE EXECUTIVE DIRECTOR AND MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now Marlin Atlantis White, Ltd., Applicant herein ("Applicant"), and files this its Supplement to its Response to Hearing Requests previously filed in this matter on October 20, 2006, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference as though set out in full, and would respectfully show as follows:

PROCEDURAL HISTORY SINCE OCTOBER FILING

Applicant filed its Exhibit "A" Response in anticipation of the Commission's Agenda to be held on this matter on November 15, 2006. However, this matter was continued from that Agenda because of concerns raised by Commission staff regarding notice of this Application and that Agenda, particularly concerns of notice to certain land owners "upstream" of the proposed discharge point contained in this Application.

That notice has now been provided and it is noted by Applicant that the notice to "upstream" landowners has resulted in the filing of no additional requests for hearing or reconsideration. Thus, all such requests for hearing or reconsideration—which were filed in 2005 and no later than September 2006—have been responded to by Applicant in its Exhibit "A" Response and also by the Executive Director and the Public Interest Counsel in their Responses filed contemporaneously.

However, following the filing of those Responses, the hearing requestors who had previously identified themselves as the "Tropical Gardens" Group filed papers which they called "Replies" to each of those Responses. To the extent that those papers might be construed by the Commission to be hearing requests, Applicant hereby supplements its Response to Hearing Requests to contain a brief reply to the contents of those papers.

THE "TROPICAL GARDENS" GROUP IS NOT AN AFFECTED PERSON

As Applicant has already described in its Exhibit "A" Response, none of the numerous objections or form requests for reconsideration sent by the various members of the "Tropical Gardens" Group contain sufficient information for the Commission to determine whether or not any of the members of the Group or the Group itself is an "affected person" under 30 TAC 55.203. No additional information responsive to the requirements of the Texas Administrative Code is supplied in the "Replies" filed by the "Tropical Gardens" Group.

For example, it simply does not meet the requirements of the rules for the "Tropical Gardens" Group to assert that "Ray and Sherry Jones are waterfront property owners within the Tropical Gardens subdivision and fall within the one mile radius designated on the ED's map. The outfall of the WWTP into Gum and Dickinson Bayous during high tide events will have an impact on their property . . ." or that protestant Ms. Rena Hardage . . . "had the best interests of the Affected Persons in mind when she protested the WWTP."

As made clear in the Applicant's Exhibit "A" Response as well as the Executive Director's Response to Hearings Requests and Requests for Reconsideration, the "Tropical Gardens" Group has failed to meet the requirements of law for "affected person" status and has not remedied that failure in any of the referenced "Replies."

POSTING ISSUE

The "Tropical Gardens" Group complains in their "Replies" that they had difficulty examining various documentation in September and October 2006 and they seem to be asserting that this somehow impacted upon their ability to correctly describe their status as "affected persons." However, it is conceded in the "Replies" that the Applicant's notice "... met TCEQ's rules for notice . . ." and it is further admitted that whatever documents were claimed to not have been available to the group at some point in time were delivered to them no later than October 12, 2006, over nine months ago.¹

This issue, thus, cannot support any assertion that the "Tropical Gardens" Group's failure to make their case for "affected person" status is the result of any claimed lack of notice.

REGIONALIZATION ISSUES

Since so many months have passed since the filings described above, Applicant deems it necessary to confirm to the Commission that while it has remained in constant communication with representatives of each and all neighboring operational and proposed wastewater treatment plants regarding a regional resolution of Applicant's wastewater issues (and, it might be added, the wastewater issues of other proposed developments in the vicinity of Applicant), no such suppliers have made themselves available for that resolution. Indeed, since the filing of Applicant's Exhibit "A" Response, the Galveston County Water Control Improvement District No. 1 has taken final action to refuse to provide service to Applicant's proposed development and, it should be noted, that such refusal was based at least in part upon objections to that

¹ The "Replies" seem to describe some difficulty by members of the "Tropical Gardens" Group in obtaining documents from the City of Dickinson. No particular act or omission by Applicant is asserted. There was none. Applicant complied with all posting and notice requirements.

proposed provision of service which were lodged with the Water Control and Improvement District by representatives of the "Tropical Gardens" Group.

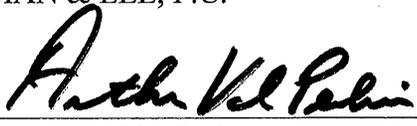
Further, although Applicant has continued to discuss "regionalization" with representatives of the City of Texas City and the San Leon Municipal Utility District, no regional solution to the wastewater issues confronting Applicant has been obtained. As the Executive Director has correctly found, there are no "regionalization issues" which could result in a denial of the Application.

CONCLUSION

As contained in its Exhibit "A" Response, Applicant continues to urge that its Application meets all requirements of applicable law and should be granted. Applicant would further again urge that should the Commission determine to refer this matter for a contested case hearing, the maximum duration of the contested case hearing should be no greater than four months.

Respectfully submitted,

COATS, ROSE, YALE,
RYMAN & LEE, P.C.

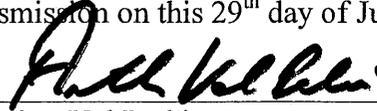
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing on all parties listed on the attached Service List by Federal Express, certified mail, return receipt requested, regular mail, hand delivery, and/or telefax transmission on this 29th day of June, 2007.



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*Please see attached for a full list of requests
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MICHAEL & TREBIE ORR
2311 OLEANDER DR
DICKINSON TX 77539-6758

ALBERT & SONIA ORTIZ
4505 PARK AVE
DICKINSON TX 77539-6935

LUBECK PARENT
4122 GRAND BLVD
DICKINSON TX 77539-3657

JANICE & JOHN PATTERSON
4115 GRAND BLVD
DICKINSON TX 77539-3658

JESSIE PERRY
445 CR 3016
DAYTON TX 77535-6353

HOWARD PETERS
5009 BAYOU BEND DR
DICKINSON TX 77539-7838

JAMES PIERCE
646 W COUNTRY GROVE CIR
PEARLAND TX 77584-2066

LINDA PIERCE
646 W COUNTRY GROVE CIR
PEARLAND TX 77584-2066

EW QUILTER
4228 SCENIC DR
DICKINSON TX 77539-3887

JO CAROLE RADER
2128 CASA RIO CIR
DICKINSON TX 77539-6770

STEPHEN RECKNER
411 ESTELLA RD
PASADENA TX 77504-2718

SAMUEL & STARLA REICHEK
4220 SCENIC DR
DICKINSON TX 77539-3687

JESUS & MARIA REYNA
4114 GRAND BLVD
DICKINSON TX 77539-3657

LOUIS & MAXINE RILEY
4812 PARK AVE
DICKINSON TX 77539-6942

DONALD ROBINSON
5115 PARK AVE
DICKINSON TX 77539-7014

JOE RODRIQUEZ
4108 SCENIC DR
DICKINSON TX 77539-3685

ALISON ROUSE
4456 SCENIC DR
DICKINSON TX 77539-3691

DAVID ROYE
4129 GUM DR
DICKINSON TX 77539-3684

INGRID & KEN RYBACK
2111 OLEANDER DR
DICKINSON TX 77539-6762

PEDRO SANCHEZ
4140 GRAND BLVD
DICKINSON TX 77539-3657

RUBIN SANCHEZ
4144 GRAND BLVD
DICKINSON TX 77539-3657

ALICE & ROBERT SAUNDERS
2130 CASA RIO CIR
DICKINSON TX 77539-6770

FREDA & ROGER SAWYER
8918 PARK AVE
DICKINSON TX 77539

GERHART SCHULTE
4203 SCENIC DR
DICKINSON TX 77539-3688

L SCOTT
STATE SENATOR MIKE JACKSON
201 ENTERPRISE AVE SUITE 600A
LEAGUE CITY TX 77573-3082

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DICKINSON TX 77539-0352

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DICKINSON TX 77539-6939

CAMILLE SHARPE
4136 GUM DR
DICKINSON TX 77539-3683

JAMES SIMPSON, JR
2301 OLEANDER DR
DICKINSON TX 77539-6758

BETTY & COY SMITH
5008 BAYOU BEND DR
DICKINSON TX 77539-7635

JUDITH SMITH
2119 CASA RIO CIR
DICKINSON TX 77539-6724

JUDITH SMITH
2114 CASA RIO CIR
DICKINSON TX 77539-6725

MARY SMITH
2120 CASA RIO CIR
DICKINSON TX 77539-6725

KATHERINE & ROBERT SOEHL
315 DIAMOND BAY DR
DICKINSON TX 77539-6336

JESSE SPENCER
4120 GRAND BLVD
DICKINSON TX 77539-3657

CAROLYN & ELDRIDGE STEVENS
5001 BAYOU BEND DR
DICKINSON TX 77539-7636

ROBERT J STOKES, JR
GALVESTON BAY FOUNDATION
17324A HIGHWAY 3
WEBSTER TX 77598-4133

DANA & VINCENT STRADA
4200 WHISPERING DR
DICKINSON TX 77539

ROBERTA & TROY SUNKEL
2137 CASA RIO CIR
DICKINSON TX 77539-8784

BENJAMIN & JUDY SVOBODA
2407 OLEANDER DR
DICKINSON TX 77539-8756

MAXWELL TEARE
4300 WHISPERING DR
DICKINSON TX 77539

HAROLD & JANE TITUS
5013 BAYOU BEND DR
DICKINSON TX 77539-7636

ROBERT TOPFER
2307 OLEANDER DR
DICKINSON TX 77539-8758

WARREN TRAHAN
2121 CASA RIO CIR
DICKINSON TX 77539-8724

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2113 OLEANDER DR
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4324 SCENIC DR
DICKINSON TX 77539-3689

STEVE & VICKY VARNER
4118 GRAND BLVD
DICKINSON TX 77539-3857

EMILY VASQUEZ
4607 PARK AVE
DICKINSON TX 77539-6937

FRANCISCO VILLANUEVA
5813 BRUCE DR
DICKINSON TX 77539-4791

M VILLONCO
5829 BRUCE DR
DICKINSON TX 77539-4791

BONNIE & MICHAEL WALCOTT
4423 SCENIC DR
DICKINSON TX 77539-3692

CLIFFORD WATTS
4125 GUM DR
DICKINSON TX 77539-3684

GARY WEEKS
5206 PARK AVE
DICKINSON TX 77539-7040

LYNN & RICHARD WEEKS
5128 PARK AVE
DICKINSON TX 77539-7015

STEPHEN WELLS
4719 PARK AVE
DICKINSON TX 77539-6939

LINDA WRIGHT
2122 CASA RIO CIR
DICKINSON TX 77539-6725

RANCE WHELPHLEY
4416 SCENIC DR
DICKINSON TX 77539-3691

MRS PEGGY WRIGHT
4216 SCENIC DR
DICKINSON TX 77539-3687

RICHARD WHITE
4608 PARK AVE
DICKINSON TX 77539-6938

CARLTON WILLIAMS
4901 PARK AVE
DICKINSON TX 77539-6943

PAM WILLIAMS
4410 ISLAND DR
DICKINSON TX 77539-4776

SUSAN WILLIAMS
2138 CASA RIO CIR
DICKINSON TX 77539-6770

CATHERINE & ROY WILSON
4112 GUM DR
DICKINSON TX 77539-3683

ELIZABETH & GARY WORTHEN
4723 PARK AVE
DICKINSON TX 77539-6939

CORALOU WRIGHT
5000 PARK AVE
DICKINSON TX 77539-7013

EDWIN & PEGGY WRIGHT
4216 SCENIC DR
DICKINSON TX 77539-3687

JENNIFER WRIGHT
2132 CASA RIO CIR
DICKINSON TX 77539-6770

TCEQ DOCKET NO. 2006-1572-MWD

IN RE: APPLICATION BY § BEFORE THE TEXAS
MARLIN ATLANTIS WHITE, LTD. § COMMISSION ON
FOR PERMIT NO. WQ0014570001 § ENVIRONMENTAL QUALITY

RESPONSE TO HEARING REQUESTS

TO THE EXECUTIVE DIRECTOR AND MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now Marlin Atlantis White, Ltd., Applicant herein ("Marlin" or "Applicant") and files this its written response to the hearing requests received by the Commission in this docket and would respectfully show as follows:

1. SUMMARY OF FACTS AND GENERAL RESPONSES

Permit Application

Marlin has applied to the Commission for a new permit, proposed Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014570001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility for which the Permit is sought will serve a proposed approximately 370 acre development in Galveston County located east of Gum Bayou, north of F.M. 517, south of F.M. 646 and within the city limits of the City of Texas City, Texas.

If the Permit is issued, the treated effluent will be discharged into Gum Bayou and shall then proceed to Dickinson Bayou Tidal in Segment 1103 of the San Jacinto-Brazos Coastal Basin.

Procedural History

The referenced Application was received by the Commission on October 21, 2004 and declared administratively complete on February 22, 2005. After all required notices, a public hearing was held in the City of Dickinson on October 6, 2005, and, thereafter, the TCEQ extended the public comment period on the Application to December 2, 2005.

On August 2, 2006, the Executive Director published his decision that the permit application met the requirements of applicable law and attached thereto his Executive Director's Response to Public Comment.

Because the Executive Director's Response to Public Comment (the "ED's Response") responds in great detail to virtually all of the contents of all of the hearing requests which Marlin has received, this response will refer to the ED's Response and respectfully adopts the ED's Response by reference as though it were set out in full below.

General Response

Marlin has received a copy of only two actual requests for hearing in this matter and no other protest or objection other than those received by the Commission in 2005 and numerous form requests for reconsideration from the "Tropical Gardens" Groups described below to the Executive Director dated September 1, 2006. As noted, each and all of the 2005 protests have been completely responded to by the ED's Response. Marlin does generally object to each and all of the protests that do not meet the requirements of the Commission by actually requesting a contested case hearing or so that the Commission can determine the "affected person" status of each and all individual requestors.

Individual Hearing Requests

As noted above, Applicant has received only two requests for hearing in this matter, one of the "Tropical Gardens" requests described below and the request of the B. C. Schroeder, Jr. Marital Trust (the "Schroeder Request").

As to the 2005 protests received by Applicant, Applicant would respectfully urge that each and all of the following protests do not contain an expressed request for a contested case hearing in this matter as required by 30 TAC 55.201(d)(3) and do not contain sufficient information as required by 30 TAC 55.201(d)(2) and (4):

Letter of Veta Winick, Mayor, City of Dickinson dated March 24, 2005;

Letter of Julie Masters, Mayor, City of Dickinson dated August 1, 2005;

Letter of Chat Magee dated April 12, 2005;

Letter of Ray and Sherry Jones dated April 13, 2005;

Letter of Rena Hardage dated August 11, 2005.

None of these protests should, therefore, form the basis for the Commission's referral of this matter to a contested case hearing nor, if this matter is so referred, have any of these protestants shown sufficient evidence to justify their status as an "affected person" in that hearing.

The "Tropical Gardens" Groups

By letter dated September 4, 2006, the Commission received a request for a contested case hearing from Ms. Peggy Wright who identified herself as "Spokesperson for Tropical Gardens Citizens and the Senior Citizens Group of Tropical Gardens." Additionally, at least 20 other separate objections to the proposed permit had been received by the Commission from

individual signators signing a "form letter" on the letterhead of the "Sr. Citizens Tropical Gardens" group at various times in July and August 2005 and approximately 45 separately signed form requests for reconsideration were sent to the TCEQ Chief Clerk on September 1, 2006 from members of these same groups.

Although Ms. Wright's 2006 letter clearly does request a contested case hearing, it does not clearly identify Ms. Wright's personal justiciable interest affected by the Application nor does it contain the other information required by 30 TAC 55.201(d)(2) and (4). It is likewise noted that neither Ms. Wright's 2006 letter nor any of the other "form letters" or form requests received by the Commission from members of the Senior Citizens Tropical Gardens Group contains sufficient information for the Commission to determine whether or not any of said individuals or the group itself is an "affected person" under 30 TAC 55.203.

Finally, it is noted that each and all of the complaints contained in Ms. Wright's letter and in each of the "form letters" and form requests have already been addressed by the ED's Response as set forth below.

The Schroeder Request

By letter dated August 29, 2006, the Commission received the Schroeder Request which does make a formal request for a contested case hearing in this matter and, at least, purports to contain information so that the Commission can consider whether or not the requestor is an "affected person" under the Commission's rules. Applicant does not concede that requestor is an "affected person." It is noted, however, that the Schroeder Request contains only complaints as to certain of the contents of the ED's Response. Each of the requestor's complaints have been directly and adequately responded to by the ED's Response as described below.

The requestor does make an additional point regarding regionalization and references the City of League City's asserted agreement with the City of Texas City regarding the provision of wastewater for a portion of the proposed development to be served by the permit and also references possible wastewater providers Galveston County Water Control Improvement District No. 1 and the San Leon Municipal Utility District.

As is contained in the ED's Response, the City of League City is one of the "regional" provider possibilities which does *not* possess sufficient capacity to serve the proposed development to be served by the permit. The fact that it may have entered into an agreement with the City of Texas City to serve a portion of the development does not alter that fact.

The proposed land to be served by the permit is not contained within the service area of the Galveston County Water Control and Improvement District No. 1 but the requestor is entirely correct that Applicant has requested that such entity examine the possibility of providing service to the development. That district has heard the request but taken no action thereon and, indeed, as recently as October 17, 2006, the Applicant's engineer was notified by the General Manager for that district that "... at present there does not seem to be a consensus of support for this project." In that same communication, the General Manager advised the Applicant's engineer that he was not authorized to expend funds even "to determine capacities" for the proposed development. Thus, it is a certainty that, at present, the Galveston County Water Control and Improvement District No. 1 does not provide a regional alternative to this permit.

Finally, Applicant has previously made clear to all interested parties that it has sought since prior to the time it filed this application some "regional" resolution of its wastewater needs which would include the San Leon Municipal Utility District and the City of Texas City. As of

the present, two years having passed, such a resolution has not been achieved. As contained in the ED's Response, there are no "regionalization issues" which could result in a denial of Marlin's Application.

2. RESPONSE TO HEARING REQUESTS

For the reasons described above, Marlin will respond to the two requests for hearing and to the protests received in 2005 in topical fashion set forth below, referencing the comment and response sections as contained in the ED's Response.

Concerns Regarding the Level of Effluent to be Permitted

Certain protests state that the effluent limits in Marlin's draft permit were not acceptable or appropriate. As confirmed by the ED's Response No. 2, the effluent levels sought by Marlin's application will have a final phase flow substantially less than that of the wastewater treatment plant operated by the City of Dickinson and in a substantially farther location away from an assertedly "impaired region" of Dickinson Bayou.

Impact on Gum Bayou

A number of the protests and requestors complained regarding the permit's proposed impact on Gum Bayou and particularly noted that portions of Gum Bayou are considered to be "threatened and impaired." As made in clear in the ED's Response Nos. 3, 20, 24, 25, 28 and others, Marlin's proposed point of discharge into Gum Bayou is downstream of any impaired region and would not significantly impact levels of dissolved oxygen in the impaired region. The final phase flow of Marlin's permit will be 0.5 MGD which, the ED has determined, will not significantly raise the level of water in Gum Bayou and should not interfere in any way with any current recreational activities enjoyed therein.

Claimed Degradation of the Receiving Stream

Certain protests and requestors have also asserted that the bacteria and depressed dissolved oxygen levels to be authorized by the permit will cause a degradation of the receiving stream in violation of TCEQ rules and regulations. ED's Response No. 4 confirms that a Tier I antidegradation review determined that existing water quality uses will *not* be impaired by this permit and a Tier II review has determined that no significant degradation of water quality is expected in Gum Bayou or Dickinson Bayou. The modeling referenced in the ED's Response No. 10 confirms that the impact on dissolved oxygen due to the proposed discharge in the impaired region of Dickinson Bayou is inconsequential under even the most pessimistic model predictions. The proposed permit will not cause a degradation of the receiving stream.

Impact on Aquatic Life

A number of protests and requestors complained that the proposed discharge resulting from the permit would be detrimental to aquatic life in Gum Bayou and Dickinson Bayou but, as with all other complaints, the ED's Response has determined that the receiving stream uses of high aquatic life will not be negatively impacted by the grant of the permit. See ED's Response No. 9.

"Regionalization" Issues

As described above, a number of protests and requestors have also stated that a regional wastewater treatment plant would be preferable to the proposed permit. Marlin does not disagree and has already communicated to the requestors that it has been in constant communication with representatives of each and all neighboring operational and proposed wastewater treatment plants

to seek a regional resolution of its wastewater issues. As described in the ED's Response No. 12, there are no "regionalization issues" which could result in a denial of Marlin's Application.

Plant Location

A number of requestors also complained regarding the proposed location of Marlin's proposed wastewater treatment plant but the ED has already determined in its Response No. 13 that Marlin's proposed location meets all applicable laws and regulations and, indeed, as described above, is in a superior location in regard to the impaired regions of Gum Bayou and Dickinson Bayou.

3. CONCLUSION

Applicant would, thus, respectfully show that, although it does not concede that any of the hearing requestors are "affected persons" under 30 TAC 55.203, each and all of the issues raised in the hearing requests and protests are disputed and involve both questions of fact and, as to their applicability to the Commission's grant of the permit, of law. To the knowledge of Applicant, the issues raised in the hearing requests have not been withdrawn by the requestors but, as described above, the issues are not relevant and material to a decision on the Application. Instead, the Applicant would show that, as contained in the ED's Response, the Application meets all requirements of applicable law and should be granted.

However, should the Commission determine to refer this matter for a contested case hearing, the maximum duration of the contested case hearing should be no greater than four months.

Respectfully submitted,

COATS, ROSE, YALE,
RYMAN & LEE, P.C.

By: Arthur Val Perkins

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ATTORNEYS FOR MARLIN ATLANTIS
WHITE, LTD.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing on all parties listed on the attached Service List by Federal Express, certified mail, return receipt requested, regular mail, hand delivery, and/or telefax transmission on this 20th day of October, 2006.

Arthur Val Perkins
Arthur Val Perkins