

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 23, 2006

LaDonna Castañuela, Chief Clerk
TCEQ Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

CHIEF CLERK'S OFFICE

2006 OCT 23 PM 1:55

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Marlin, Atlantis White, Ltd.
TCEQ Permit No. WQ0014570001
Docket No. 2006-1572-MWD
Executive Director's Response to Hearing Requests and Requests for Reconsideration

Dear Ms. Castañuela:

I am enclosing for filing with the Texas Commission on Environmental Quality (Commission) an original and 11 copies of the "*Executive Director's Response to Hearing Request and Request for Reconsideration*" regarding Marlin, Atlantis White, Ltd., Permit No. WQ0014570001.

Please file stamp these documents and return one to Marc Friberg, Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-0611.

Sincerely,

A handwritten signature in cursive script that reads "Marc Friberg".

Marc Friberg
Staff Attorney
Environmental Law Division

DOCKET NUMBER 2006-1572-MWD

Application by	§	Before the
Marlin Atlantis White, Ltd.	§	TEXAS COMMISSION ON
for TPDES Permit No. WQ0014570001	§	ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST AND REQUEST
FOR RECONSIDERATION**

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Marlin Atlantis White, Ltd. (Applicant) for a new TPDES Permit Number WQ0014570001. A timely letter requesting a contested case hearing (CCH) was received from the following requestors: **Bert Schroeder on behalf of the B.C. Schroeder Jr. Marital Trust, the City of Dickinson, Peggy Wright on behalf of the citizens of Tropical Gardens and the Tropical Gardens Senior Citizen Group, Rena Hardage, Ray and Sherry Jones, Chat Magee, and the Senior Citizens of Tropical Garden (Betty Gutierrez, Carol and Tom Bennett, Kelly Brautigam, L.L. Coots, Tom and Carol Dayton, Mr. And Mrs. Matthew Dayton, Mason Evans, Diane Garcia, Lynn Garcia, Carl Griffith, Bobby Hagan, Art and Jane Levicki, Bridget Long, Dudley Long, Dawn Pajak, Janice Patterson, John Patterson, Robert Sampson, and Louis Starz).** A timely letter requesting a Request for Reconsideration was received from the following requestors: **Bert Schroeder, on behalf of the B.C. Schroeder Jr., Marital Trust, James D. Alber, John Berry, Mark P. Bowers, Damon and Nicole Brown, Van R. Bush, Zeph Capo, Roland Cardon, Wade Duphily, Fred Eagle, James Ettell, Lynn M. Garcia, Kay Gonzales, Matthew Muns, Betty Gutierrez, Elizabeth Hagan, Pham Huyah, Ray Jones, Sherry Jones, Lisa Kellogg, Richard Kellogg, Scott Kellogg, Bridget Long, Dudley E. Long, Lorna Malone, Robert Malone, Diane Mettlach, Bill Mulvany, Cyndi W. Mulvany, Daniel Oakes, Linda Oakes, Dawn C. Pajak, Janice Patterson, John C. Patterson, Ha Pham, Nancy Priddy, Young Reese, Sam Reichel, Starla Reichel, Danny L. Rodgers, Alison Rouse, Alton Rouse, Pedro Sanchez, Louis Starz, Wawda J. Toole, Tomas Villanueva, Francisco Villanueva, Amber Whitted, Pamela Williams, Edwin G. Wright, and Peggy Wright.**

Attached for commission consideration are the following:

- Attachment A - Technical Summary & Draft Permit
- Attachment B - Executive Director's Response to Comments (RTC)
- Attachment C - GIS Map

Copies were provided to all parties. The Executive Director's Response to Comment (RTC) was previously mailed by the Office of Chief Clerk to all persons on the mailing list.

II. Description Of The Facility

Marlin Atlantis White, Ltd. has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. If the permit is issued, the facility will be an activated sludge process plant operated in the complete mix aeration mode. Treatment units will include bar screens, aeration basins, final clarifiers, sludge digesters, and chlorine contact chambers. The facility has not been constructed.

The wastewater treatment plant will serve a proposed 370 acre development located 2.1 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County. The draft permit authorizes the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application site, or co-disposal landfill.

The plant site will be located adjacent to Gum Bayou, approximately 2.14 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County, Texas. If the draft permit is issued, the treated effluent will be discharged to Gum Bayou; then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are high aquatic life uses for Gum Bayou. The designated uses for Segment No. 1103 are high aquatic life uses and contact recreation.

This is a proposed facility; therefore, the compliance history is average by default.

III. Procedural Background

The permit application for a new permit was received on October 21, 2004, and declared administratively complete on February 22, 2005. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on February 24, 2005, in the *Houston Chronicle*. The Notice of Application and Preliminary Decision for a water quality permit was published on July 27, 2005 in the *Houston Chronicle*. The Notice of Public Meeting was published on September 5, 2005 in the *Houston Chronicle*. The public meeting was held on October 6, 2005 in the City of Dickinson. The Executive Director received several comments that the notice of the public meeting was inadequate. The notice met TCEQ's rules for notice; however, to ensure the Commission received comments from all interested persons, the public comment period was extended to December 2, 2005.

IV. Evaluation of Hearing Requests

The regulations governing requests for contested case hearings are found at 30 Texas Administrative Code (TAC), Chapter 55.

A. Whether Requestor "Substantially Complied" With 30 TAC §55.201, Subchapter F

30 TAC §55.201 requires that a CCH request must comply with the following: (1) Be in writing; (2) Be timely filed; (3) Request a contested case hearing; (4) Give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; (5) Provide any other information specified in the public notice of application; and (6) List all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the request.

The B.C. Schroeder Jr. Marital Trust, the City of Dickinson, The Citizens of Tropical Gardens and the Tropical Gardens Senior Citizen Group, Rena Hardage, Ray and Sherry Jones, Chat Magee, and the Senior Citizens of Tropical Garden (Betty Gutierrez, Carol and Tom Bennett, Kelly Brautigam, L.L.Coots, Tom and Carol Dayton, Mr. And Mrs. Matthew Dayton, Mason Evans, Diane Garcia, Lynn Garcia, Carl Griffith, Bobby Hagan, Art and Jane Levicki, Bridget Long, Dudley Long, Dawn Pajak, Janice Patterson, John Patterson, Robert Sampson, and Louis Starz) all submitted a written CCH request prior to the deadline to file such requests, provided the required contact information, requested a contested case hearing, clearly identified the permit number, and raised relevant and material disputed issues.

The Executive Director concludes that the requestors named above substantially complied with the requirements of 30 TAC § 55.201.

B. Whether Requestor Meets the Requirements of an Affected Person.

A person who requests a CCH must be an “affected person” as defined in 30 TAC § 55.203(a). The rule defines an “affected person” as “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.” The rules list specific factors to consider when determining who qualifies as an “affected person,” including:

- (1) Whether the interest claimed is one protected by the law under which the application will be considered;
- (2) Distance restrictions or other limitations imposed by law on the affected interest;
- (3) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) The likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) The likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) For governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

1. The property owned by the **B.C. Schroeder Jr. Marital Trust** is located directly across Gum Bayou from the proposed wastewater treatment plant.

Because of the location of the property, the Executive Director recommends that the Commission find that Bert Schroeder on behalf of the B.C. Schroeder Jr. Marital Trust is an affected person.

2. The **City of Dickinson** is a governmental entity with statutory authority over or interest in the issues relevant to the application.

Because the City of Dickinson is such a governmental entity, the Executive Director recommends that the Commission find that it is an affected person.

3. According to 30 TAC §55.205, a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) One or more members of the group association would otherwise have standing to request a hearing in their own right;
- (2) The interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Peggy Wright requested a CCH on behalf of the **citizens of Tropical Gardens** and the **Tropical Gardens Senior Citizen Group**. Tropical Gardens is a subdivision directly downstream, within one mile, of the proposed wastewater treatment plant. However, Ms. Wright did not provide sufficient information to determine whether the groups have association standing.

Because Ms. Wright did not provide any information regarding the organizations and association standing, the Executive Director recommends that the Commission find neither the citizens of Tropical Gardens nor the Tropical Gardens Senior Citizen Group as an affected group or association.

4. **Rena Hardage's** address on her hearing request indicates that she lives approximately two miles west of the location of the proposed discharge. The address contained in Ms. Hardage's hearing request places her outside the one mile radius displayed on the GIS Map (Attachment C).

Because Ms. Hardage did not demonstrate that she meets any of the criteria in 30 TAC §55.203(c), the Executive Director recommends that the Commission find that Ms. Hardage is not an affected person.

5. **Ray and Sherry Jones'** address is in Tropical Gardens, but it is not adjacent to the discharge route.

Because Ray and Sherry Jones did not demonstrate that they meet any of the criteria in 30 TAC §55.203(c), the Executive Director recommends that the Commission find that Ray and Sherry Jones are not affected persons.

6. **Chat Magee's** address on his hearing request indicates that he lives more than three miles from the location of the proposed discharge (Attachment C). In addition, Mr. Magee raises no issues in his request.

Because Chat Magee did not demonstrate that he meets any of the criteria in 30 TAC §55.203(c), the Executive Director recommends that the Commission find that Chat Magee is not an affected person.

7. The **Senior Citizens of Tropical Gardens** sent in identical, individual requests. Tropical Gardens is less than one mile downstream of the proposed wastewater treatment plant and borders Gum Bayou on one side. Some of the individuals living in the subdivision may be affected persons while others may not. The Executive Director is unsure whether these requests were intended to be a request for affected party status as a group, or if the requests were for individual party status.

If the requests were for affected party status as a group or association, the request does not meet the requirements codified in 30 TAC §55.205, listed above.

Because the requests did not meet the requirements codified in 30 TAC §55.205, the Executive Director recommends that the Commission find that the Senior Citizens of Tropical Gardens is not an affected group or association.

If the requests were from affected persons in their individual capacity:

Betty Gutierrez lives along Gum Bayou in Tropical Gardens. Her property is less than one mile downstream from the proposed wastewater treatment plant.

Because of the location of her property, the Executive Director recommends that the Commission find Betty Gutierrez an affected person.

Carol and Tom Bennett, Kelly Brautigam, L.L.Coots, Tom and Carol Dayton, Mr. And Mrs. Matthew Dayton, Mason Evans, Diane Garcia, Lynn Garcia, Carl Griffith, Bobby Hagan, Janice Levicki, Bridget Long, Dudley Long, Dawn Pajak, Janice Patterson, John Patterson, Robert Sampson, and Louis Starz all live in Tropical Gardens, but their property is not located along Gum Bayou and they express an interest that is common with the interest of the general public. Therefore, they have not enunciated a justiciable interest.

Because the above named requestors did not demonstrate that they meet any of the criteria in 30 TAC §55.203(c), the Executive Director recommends that the Commission find that none is an affected person.

C. Opportunity to Respond.

According to 30 TAC §55.209(g), the requestors may submit written replies to this Response no later than nine days before the commission meeting.

D. Whether Issues Raised Are Referable To The State Office Of Administrative Hearings (SOAH) For A CCH.

The Commission applies the following test, set out in 30 TAC § 55.211(b)(3)(A), to determine whether to refer one or more of the issues raised to SOAH for a CCH:

[T]he request raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comments, and that are relevant and material to the Commission's decision on the application.

The following issues were raised in the hearing requests:

Issue # 1: Whether the proposed discharge will negatively impact the requestor's property.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. The TCEQ does not have jurisdiction to address concerns over negative impacts to private property that do not involve water quality.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 2: Whether the data provided by the Applicant and used by the Executive Director for modeling was accurate.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 3: Whether the dissolved oxygen in the impaired region would be impacted.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 4: Whether a proper stream survey should be conducted.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application since the Executive Director does not perform the requested type of survey during the permitting process.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 5: Whether the information provided in the application caused the Executive Director to perform an improper evaluation.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 6: Whether Gum Bayou is tidally influenced at the point of discharge.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 7: Whether it would be better for the environment to have a less dense development using septic systems.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The TCEQ bases its evaluation of proposed wastewater treatment plants on information contained in each application. If it is determined that the proposed discharge can comply with the Texas Surface Water Quality Standards, codified in Title 30, Chapter 307 of the Texas Administrative Code, and that the proposed discharge, made in compliance with the draft permit, will be protective of human health and the environment, the Executive Director does not have the authority to require a different discharge location or a different type of wastewater treatment.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 8: Whether a TMDL study should be performed before the draft permit is issued.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The TMDL development process is separate from the TPDES permitting process and proceeds on a different schedule. The processing of wastewater permits is not delayed pending the results of the TMDL study. However, all permits within the scope of the TMDL will be subject to its requirements, if applicable, once the TMDL is finalized and an implementation plan has been developed.

Water quality permitting in 303(d)-listed water bodies is described in the TCEQ regulatory guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (January 2003, RG 194), which is approved by the EPA. According to TCEQ's current procedures, specified in RG-194, issuance of a permit to discharge wastewater into a 303(d)-listed water body may be authorized in the absence of a TMDL. Issuance of a permit may be authorized if the discharge does not contain significant amounts of the listed pollutant or if the discharge is not directly to the listed portion of the water body and is not close enough to potentially impact the listed area.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 9: Whether the Applicant's queries into potential service from wastewater treatment plants contained within the required three-mile survey were adequate.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application. According to Texas Water Code §26.081, the TCEQ is mandated to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." The Domestic Wastewater Permit Application Technical Report requires information concerning regional WWTPs. The Applicant was required to survey a three-mile area surrounding its proposed WWTP in order to determine if there was a WWTP or sewer collection lines in the area, with sufficient capacity, for the proposed facility to use. The Applicant indicated that there are three WWTPs within three miles of the proposed facility; Via Bayou, Inc., Galveston County WCID # 1, and Bacliff Municipal Utility District. According to the application, none of these facilities currently have capacity to accept the volume of wastewater proposed by the Applicant.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 10: Whether the discharge will negatively impact the waterbody.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 11: Whether the description of Segment 1103D is correct.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The physical description contained in the 2004 303(d) list is for the purpose of identifying segments of a certain watershed. The description itself has no impact on the review of a proposed wastewater permit application. The TCEQ reviews water quality data and the designated uses of the waterbodies into which an the application proposes to discharge effluent.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 12: Whether the notices were published in the correct newspapers.

This issue was raised during the comment period, and was not withdrawn. However, the issue is an issue of law. Three notices were published in regard to this application. According to 30 TAC §39.405(f)(1), the first notice, the Notice of Application and Intent to Obtain a Water Quality Permit (NORI), "shall [be published] in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality." The applicant published its NORI in the *Houston Chronicle*. According to 30 TAC §39.551(c)(1), the second notice, the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD), "shall [be published] at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge." The Applicant published its NAPD in the *Houston Chronicle*. According to 30 TAC §39.405(f)(1), the Notice of Public meeting, "shall [be published] in the newspaper of largest circulation in the county in which the facility is located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality." The Applicant published its Notice of Public Meeting in the *Houston Chronicle*.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 13: Whether the discharge will lead to flooding of neighborhood properties.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. TCEQ has not addressed flooding and/or drainage issues in the wastewater permitting process, unless there is a potential impact to water quality.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 14: Whether fish and wildlife will be negatively impacted by the facility's discharge of wastewater.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 15: Whether it is appropriate for the Commission to authorize a discharge to a 303(d) listed water.

This issue was raised during the comment period, and was not withdrawn. However, the issue is an issue of law. The fact that a waterbody is listed on the 303(d) list does not preclude authorization of a new discharge permit to the waterbody. Additional authorizations to discharge wastewater containing constituents of concern may be permitted into the watershed of 303(d) listed segments if it can be demonstrated that the new discharge is not likely to cause or contribute to the impairment. Factors considered in making this determination may include the degree of hydraulic connection between the discharge point and the listed portion of the Segment, the distance between the discharge point and the impaired region, the persistence of the constituents of concern in the environment, or other factors that would likely mitigate the impact of the discharge on the impaired region.

Segment 1103 and Gum Bayou are currently listed on the state's inventory of impaired and threatened waters (2004 Clean Water Act 303(d) list). Gum bayou is listed for elevated bacteria levels and Segment 1103 is listed for elevated bacteria levels and depressed dissolved oxygen, in the portion of the Segment above State Highway 3. The Applicant's proposed discharge location is on Gum Bayou, which joins Segment 1103 downstream of the impaired region. The *Procedures to Implement the Texas Surface Water Quality Standards, RG-194*, require additional scrutiny be given to applications for discharges that enter water bodies with impaired dissolved oxygen levels. Additional permit requirements are imposed as necessary to address potential water quality impacts from listed pollutants. Model results for this application indicate that dissolved oxygen in the impaired region would not be significantly impacted by the Applicant's proposed wastewater treatment facility. The facility is also designed to provide adequate disinfection, and therefore, should not add to the bacterial impairments.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 16: Whether the discharge limits are appropriate.

This issue raises a disputed issue of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission's decision on the application as the TCEQ is tasked in its permitting program with protecting water quality and human health.

The Executive Director recommends that this issue be referred to SOAH.

Issue # 17: Whether property where the wastewater treatment plant would be located has been appropriately remediated.

This issue raises an issue of fact, was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. TCEQ cannot address remediation issues in the wastewater permitting process, unless there is a potential impact to water quality.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 18: Whether the wastewater treatment plant should be manned 24 hours a day, 7 days a week.

This issue was raised during the comment period, and was not withdrawn. However, the issue is an issue of law. According to 30 TAC §30.350(j), a facility must be operated a minimum of 5 days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level or license or higher must be available by telephone or pager seven days per week.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 19: Whether the Applicant should be required to find a more desirable location for the wastewater treatment plant.

This issue was raised during the comment period, and was not withdrawn. However, the issue is an issue of law. The TCEQ bases its evaluation of proposed wastewater treatment plants on information contained in each application. If it is determined that the proposed discharge can comply with the Texas Surface Water Quality Standards, codified in Title 30, Chapter 307 of the Texas Administrative Code, and that the proposed discharge, made in compliance with the draft permit, will be protective of human health and the environment, the Executive Director does not have the authority to require a different discharge location or plant site.

The Executive Director recommends that this issue not be referred to SOAH.

Issue # 20: Whether other agencies, such as Texas Parks and Wildlife and the Health Department should comment on the application.

This issue was raised during the comment period, and was not withdrawn. However, the issue is not relevant and material to the Commission's decision on the application. The TCEQ considers every timely comment that is received on an application for a wastewater discharge. Both agencies had an opportunity to comment. Nevertheless, comments from other Texas agencies are not legally required as a prerequisite to the TCEQ taking action on a permit application.

The Executive Director recommends that this issue not be referred to SOAH.

VI. Duration For The Contested Case Hearing

The Executive Director recommends six months as the duration of the CCH, should the Commission decide to refer the case.

VII. Bert Schroeder's Requests for Reconsideration

Bert Schroeder, on behalf of the B.C. Schroeder Jr., Marital Trust, filed a timely Request for Reconsideration of the Executive Director's decision in a letter file stamped September 7, 2006.

A. Mr. Schroeder's Issues

Issue 1: Mr. Schroeder believes that the wastewater discharge will negatively affect the estuarial stream.

Response 1: This issue was addressed in Response 4 of the RTC. The response was as follows:

RESPONSE 4:

TCEQ's rules prohibit new discharges that would cause degradation of the receiving stream. To ensure the effluent limits in [the] draft permit will maintain and protect the existing instream uses, the ED's staff performs an antidegradation review of the receiving waters. A Tier I antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier II review has preliminarily determined that no significant degradation of water quality is expected in Gum Bayou or Dickinson's Bayou, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and wasteload allocations for water

quality limited streams as established in the Texas Surface Water Quality Standards and the water quality management plan.

For this application, staff reviewed USGS quadrangle maps as well as high altitude photography of the discharge area. Both of these sources showed the discharge to be on a point near the main pool of the lake. The shoreline near the discharge appears to have several boat houses and boat docks along the northeast shoreline, but no apparent inlets. The location and orientation of this shoreline should provide a large wind fetch that would promote both significant mixing as well as linear transport of the discharged effluent.

(Att. B, pg. 6-7).

Issue 2: Mr. Schroeder believes that the wastewater discharge will negatively impact his property.

Response 2: The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. The TCEQ does not have jurisdiction to address concerns over negative impacts to private property that do not involve water quality.

Issue 3: Mr. Schroeder states that the description of Segment 1103D is factually incorrect on the 2004 303(d) list.

Response 3: The physical description contained in the 2004 303(d) list is for the purpose of identifying segments of a certain watershed. The description itself has no impact on the review of a proposed wastewater permit application. The TCEQ reviews water quality data and the designated uses of the waterbodies into which an the application proposes to discharge effluent.

Issue 4: Mr. Schroeder states that the modeling for the discharge was based on inaccurate data and that the TCEQ cannot produce accurate results from questionable data.

Response 4: This issue was addressed in Responses 10, 11, and 15 of the RTC. The responses were as follows:

RESPONSE 10:

[The Applicant's] proposed discharge was evaluated for its potential to affect dissolved oxygen in the dissolved oxygen impaired portion of Dickinson Bayou using a numerical model. The model results indicated that the impact on dissolved oxygen due to the proposed discharge in the impaired region was inconsequential under conditions of low background flow, high water temperatures, and full permitted authorizations from other point sources. These combinations of conditions are those that are normally expected to provide the most pessimistic model predictions.

Additional authorizations to discharge wastewater containing constituents of concern can be permitted into the watershed of 303(d) listed segments if it can be demonstrated that the new discharge is not likely to cause or contribute to the impairment. Factors considered in making this determination may include the degree of hydraulic connection between the discharge point and the listed portion of the Segment, the distance between the discharge point and the impaired region, the persistence of the constituents of concern in the environment, or other factors that would likely mitigate the impact of the discharge on the impaired region.
(Att. B, pg. 10-11).

RESPONSE 11:

No nonpoint sources of oxygen demanding constituents are included in TCEQ's modeling analysis because they are not expected to occur during conditions of low background flow, high water temperatures, and full permitted authorizations from point sources. The QUAL-TX model used for this evaluation was largely developed from studies performed in the 1980s and is the most appropriate analytical tool for making permitting decisions until the Total Maximum Daily Load (TMDL) project progresses to the point where a better tool becomes available.
(Att. B, pg. 11-12).

RESPONSE 15:

TCEQ's modeling staff recognizes that the dimensions provided for Gum Bayou in the application do not represent normal water level conditions. The dissolved oxygen model used to evaluate [the] application was developed using water body width dimensions measured from aerial photographs.
(Att. B, pg. 15).

Issue 5: Mr. Schroeder specifically addresses the RTC and states, "[in] Responses 15, 19, & 35: TCEQ Modeling Staff acknowledges that the modeling for dissolved oxygen is based on aerial photos not representative of normal water level conditions. We had requested a proper stream survey (width, depth & flow), to our knowledge no such study has been undertaken or results disclosed."

Response 5: The Executive Director does not perform this type of survey during the permitting process.

Issue 6: Mr. Schroeder states, "[w]e dispute the Applicant's description in page 10 of their application that on 05/24/04 at 10:30 am 'Stream is very wide and flowing full. Transects were taken from previously obtained hydrological models.' Yet in the Domestic Administrative Report (DAR) (stamped Received 10/21/2004 by the Water Quality Applications Team and Received 04/19/2005 Region 12) the statement reads 'Stream is obstructed by the bridge at FM 517. Stream is very wide and flowing full. No transects were done.' So which version is correct? When were these previous hydrological studies performed and why were they removed?"

Response 6: This issue was addressed in Response 35 of the RTC. The response was as follows:

RESPONSE 35:

TCEQ Modeling Staff recognized that the dimensions provided for Gum Bayou in the application did not represent normal water level conditions. The dissolved oxygen model used to evaluate the Marlin Atlantis White, Ltd.'s application was developed using water body width dimensions measured from aerial photographs. (Att. B., pg. 25).

Issue 7: Mr. Schroeder specifically addresses the RTC and states, "[i]n Response 28: The Director states that at the point of discharge, Gum Bayou exhibits characteristics typical of a bayou, but that upstream of the discharge point Gum Bayou is no longer tidally influenced. That is simply factually incorrect."

Response 7: Response 28 of the RTC addressed the following comment, "Gum Bayou is little more than a drainage ditch and is not deep enough to handle 500,000 gallons of wastewater per day." The specific response was as follows:

RESPONSE 28:

At the point of [the] discharge, Gum Bayou exhibits characteristics typical of a bayou. Upstream of [the] discharge point, Gum Bayou is no longer tidally influenced and narrows to a ditch. (Att. B, pg. 22).

Mr. Schroeder gives no additional information about what is "factually incorrect" about the Executive Director's statement.

Issue 8: Mr. Schroeder specifically addresses the RTC and states, "In Response 7: The Director indicates WWTPs typically provide superior treatment of raw sewage than septic tanks ... for a proposed development of this type, a WWTP will provide a higher level of environmental protection than a septic tank. While that may be correct, a development of this type (1,200+ homes on 370 acres) could not and would not have been allowed under Texas City's rules requiring two or more acres per house if using septic. It is comparing apples to oranges."

Response 8: Response 7 of the RTC addressed the following comment, "Mayor Masters asked if a study had been done to compare the impact on Dickinson Bayou and Gum Bayou between septic systems for each lot and a wastewater treatment plant on a day-to-day basis during an upset." The Executive Director's response was to a specific comment and states that "WWTPs typically provide superior treatment of raw sewage than septic tanks." In addition, the Executive Director stated that "for a proposed development of this type, a WWTP will provide a higher level of environmental protection than a septic tank." While Texas City's rules may require two or more acres per house if using septic, the TCEQ bases its evaluation of proposed wastewater treatment plants on.

information contain in each application. If it is determined that the proposed discharge can comply with the Texas Surface Water Quality Standards, codified in Title 30, Chapter 307 of the Texas Administrative Code, and that the proposed discharge, made in compliance with the draft permit, will be protective of human health and the environment, the Executive Director does not have the authority to question the manner of wastewater treatment.

Issue 9: Mr. Schroeder states, “[w]e requested a TMDL study for Gum Bayou, which the Director said is not required, but was scheduled for the fall of 2006 for Dickinson Bayou and its tributaries. I request that since this study’s results are but a few weeks away, that granting this permit be delayed until current data can be incorporated into a far more accurate model.”

Response 9: This issue was addressed in Response 14 of the RTC. The response was as follows:

RESPONSE 14:

The TMDL development process is separate from the TPDES permitting process and proceeds on a different schedule. Processing of wastewater permits are not delayed pending the results of the TMDL study. However, all permits within the scope of the TMDL will be subject to its requirements, if applicable, once the TMDL is finalized and an implementation plan has been developed.

Water quality permitting in 303(d)-listed water bodies is described in the TCEQ regulatory guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (January 2003, RG 194), which is approved by the EPA. According to TCEQ’s current policy and procedures, specified in RG-194, issuance of a permit to discharge wastewater into a 303(d)-listed water body may be authorized in the absence of a TMDL. Issuance of a permit may be authorized if the discharge does not contain significant amounts of the listed pollutant or if the discharge is not directly to the listed portion of the water body and is not close enough to potentially impact the listed area.

(Att. B, pg. 14-15).

Issue 10: Mr. Schroeder states, “[r]egarding regionalization, [the] Director indicated [the Applicant] stated there were three WWTPs within 3 miles of their proposed WWTP, but none could provide capacity. Yet the City of League City has entered into an agreement with the City of Texas City to provide sewage treatment for the first phase (approximately 300 homes for the Applicant). The Applicant stated that at the Galveston County WCID # 1 Board meeting on August 21, 2006 that their WWTP would be 3 or more years away from construction. They were requesting that WCID # 1 explore options for WCID # 1 to provide sewer treatment for their remaining phases. [The ED] should have the testimony from representatives of the San Leon MUD presented at [the] Public Hearing [sic] on October 6, 2005 which indicated they had the capacity to handle [the] Applicant’s needs.”

Response 10: This issue was addressed in Response 12 of the RTC. The response was as follows:

RESPONSE 12:

According to Texas Water Code §26.081, the TCEQ is mandated to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” Also, the Texas Water Code §26.0282 provides that “in considering the issuance of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area wide or regional waste collection, treatment, and disposal systems not designated as area wide or regional disposal systems by Commission Order.”

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of WWTPs. The Applicant was required to survey a three-mile area surrounding its proposed WWTP to determine if there is a WWTP or sewer collection lines in the area, with sufficient capacity, that the Applicant could use. In its application, Marlin, Atlantis White, Ltd. indicated that there are three WWTPs within three miles of the proposed facility; Via Bayou, Inc., Galveston Co. WCID No. 1, and Bacliff Municipal Utility District. According to [the] application, none of the facilities currently have capacity to accept the volume of wastewater proposed by [the Applicant].

The Commission, however, may not deny an otherwise valid request for a WWTP based on what *might* happen in the future. If a regional WWTP is built in the area and has the capacity to serve [the Applicant’s] service area, it would be possible for [the Applicant] to connect to the regional WWTP and dismantle its existing WWTP. (Att. B, pg. 12-13).

For the reasons stated above, the Executive Director respectfully recommends that the B.C. Schroeder Jr., Marital Trust’s Request for Reconsideration be denied.

VIII. Resident’s Requests for Reconsideration

A request for reconsideration was made by **James D. Alber, John Berry, Mark P. Bowers, Damon and Nicole Brown, Van R. Bush, Zeph Capo, Roland Cardon, Wade Duphily, Fred Eagle, James Ettell, Lynn M. Garlil, Kay Gonzales, Matthew Muns, Betty Gutierrez, Elizabeth Hagan, Pham Huyah, Ray Jones, Sherry Jones, Lisa Kellogg, Richard Kellogg, Scott Kellogg, Bridget Long, Dudley E. Long, Lorna Malone, Robert Malone, Diane Mettlach, Bill Mulvany, Cyndi W. Mulvany, Daniel Oakes, Linda Oakes, Dawn C. Pajak, Janice Patterson, John C. Patterson, Ha Pham, Nancy Priddy, Young Reese, Sam Reichek, Starla Reichek, Danny L.**

Rodgers, Alison Rouse, Alton Rouse, Pedro Sanchez, Louis Starz, Wawda J. Toole, Tomas Villanueva, Francisco Villonueva, Amber Whitted, Pamela Williams, Edwin G. Wright, and Peggy Wright (The Residents). Each request raised identical issues.

Issue 1: The Residents state that faulty data was used by the Executive Director's modeling staff to assess Gum Bayou's physical characteristics.

Response 1: This issue was addressed in Responses 10, 11, and 15 of the RTC. The responses were as follows:

RESPONSE 10:

The proposed discharge was evaluated for its potential to affect dissolved oxygen in the dissolved oxygen impaired portion of Dickinson Bayou using a numerical model. The model results indicated that the impact on dissolved oxygen due to the proposed discharge in the impaired region was inconsequential under conditions of low background flow, high water temperatures, and full permitted authorizations from other point sources. These combinations of conditions are those that are normally expected to provide the most pessimistic model predictions.

Additional authorizations to discharge wastewater containing constituents of concern can be permitted into the watershed of 303(d) listed segments if it can be demonstrated that the new discharge is not likely to cause or contribute to the impairment. Factors considered in making this determination may include the degree of hydraulic connection between the discharge point and the listed portion of the Segment, the distance between the discharge point and the impaired region, the persistence of the constituents of concern in the environment, or other factors that would likely mitigate the impact of the discharge on the impaired region.

(Att. B, pg. 10-11).

RESPONSE 11:

No nonpoint sources of oxygen demanding constituents are included in TCEQ's modeling analysis because they are not expected to occur during conditions of low background flow, high water temperatures, and full permitted authorizations from point sources. The QUAL-TX model used for this evaluation was largely developed from studies performed in the 1980s and is the most appropriate analytical tool for making permitting decisions until the Total Maximum Daily Load (TMDL) project progresses to the point where a better tool becomes available.

(Att. B, pg. 11-12).

RESPONSE 15:

TCEQ's modeling staff recognizes that the dimensions provided for Gum Bayou in the application do not represent normal water level conditions. The dissolved oxygen

model used to evaluate [the] application was developed using water body width dimensions measured from aerial photographs.
(Att. B, pg. 15).

Issue 2: The Resident's state that the Executive Director's modeling staff failed to fully consider and physically measure the tidal affect on Gum Bayou.

Response 2: This issue was addressed in Response 17 of the RTC. The response was as follows:

RESPONSE 17:

Even though [the Applicant] stated that Gum Bayou is not tidally affected, TCEQ staff is aware of its characteristics; therefore, Gum Bayou was assessed as tidal with a high aquatic life use and corresponding 4.0 mg/l dissolved oxygen requirement.
(Att. B, pg.16).

Issue 3: The Residents feel that the permit is being allowed based solely on hypothetical discharge data from the Applicant and the modeling staff, and that the permit process does not take into consideration the affect the discharge will have on the receiving body of water or surrounding area.

Response 3: This issue was addressed in Response 4 of the Executive Director's Response to Public Comment (RTC). The response was as follows:

RESPONSE 4:

TCEQ's rules prohibit new discharges that would cause degradation of the receiving stream. To ensure the effluent limits in [the] draft permit will maintain and protect the existing instream uses, the ED's staff performs an antidegradation review of the receiving waters. A Tier I antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier II review has preliminarily determined that no significant degradation of water quality is expected in Gum Bayou or Dickinson's Bayou, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and wasteload allocations for water quality limited streams as established in the Texas Surface Water Quality Standards and the water quality management plan.
(Att. B, pg. 6-7).

For the reasons stated above, the Executive Director respectfully recommends that the Resident's Request for Reconsideration be denied.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions:

- A. Grant the request for a CCH because Bert Schroeder on behalf of the B.C. Schroeder Jr. Marital Trust, the City of Dickinson, and Betty Gutierrez are affected persons with a personal justiciable interest affected by the permit application. 30 TAC §55.203(c).
- B. If the Commission finds that any requestor is an affected person, refer the CCH request to SOAH on the following issues:
 - 1. **Whether the data provided by the Applicant and used by the Executive Director for modeling was accurate.**
 - 2. **Whether the dissolved oxygen in the impaired region would be impacted.**
 - 3. **Whether the information provided in the application caused the Executive Director to perform an improper evaluation.**
 - 4. **Whether Gum Bayou is tidally influenced at the point of discharge.**
 - 5. **Whether the Applicant's queries into potential service from wastewater treatment plants contained within the required three-mile survey were adequate.**
 - 6. **Whether the discharge will negatively impact the waterbody.**
 - 7. **Whether fish and wildlife will be negatively impacted by the facility.**
 - 8. **Whether the discharge limits are appropriate.**
- C. Deny the Requests for Reconsideration. The concerns were either addressed in the ED's RTC or the additional information that was submitted does not warrant reconsideration.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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THE EXECUTIVE DIRECTOR

CERTIFICATE OF SERVICE

I certify that on October 23, 2006 the original and eleven copies of the foregoing "Executive Director's Response to Hearing Request" and attachments for Permit No. WQ0011219001 were filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk and a complete copy was served on all persons listed on the attached mailing list via hand delivery, facsimile, Inter-Agency Mail, or deposit in the U.S. Mail.

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ATTACHMENT

A

**STATEMENT OF BASIS/TECHNICAL SUMMARY
AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION**

DESCRIPTION OF APPLICATION

Applicant: Marlin Atlantis White, Ltd.;
Texas Pollutant Discharge Elimination System (TPDES) Permit No.
WQ0014570001, (TX0127248)

Regulated Activity: Domestic Wastewater Permit

Type of Application: New Permit

Request: New Permit

Authority: Federal Clean Water Act, Section 402; Texas Water Code Section 26.027; 30
TAC Chapters 305, 307, 309, 312, 319, 30; Commission policies; and EPA
guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The proposed permit includes an expiration date of September 1, 2010 according to 30 TAC Section 305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.125 MGD in the Interim I phase, not to exceed a daily average flow of 0.250 MGD in the Interim II phase and not to exceed a daily average flow of 0.500 MGD in the Final phase. The proposed wastewater treatment facility will serve a proposed 370 acre development located 2.1 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517.

PROJECT DESCRIPTION AND LOCATION

The Marlin Atlantis White, Ltd. Wastewater Treatment Facility will be an activated sludge process plant operated in the complete mix aeration mode. Treatment units include bar screens, aeration basins, final clarifiers, sludge digesters, and chlorine contact chambers. The facility has not been constructed.

The draft permit authorizes the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application site or co-disposal landfill.

The plant site will be located adjacent to Gum Bayou, approximately 2.14 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County, Texas.

The treated effluent will be discharged to Gum Bayou; thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are high aquatic life uses for Gum Bayou. The designated uses for Segment No. 1103 are high aquatic life uses and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review

Statement of Basis/Technical Summary and Executive Director's Preliminary Decision

of the receiving waters was performed. A Tier I antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier II review has preliminarily determined that no significant degradation of water quality is expected in Gum Bayou or Dickinson's Bayou, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. All determinations are preliminary and subject to additional review and/or revisions.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and wasteload allocations for water quality limited streams as established in the Texas Water Quality Standards and the water quality management plan.

The effluent limitations in the draft permit have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). This facility has been included in the WQMP prior to submission of the application under the name of LJA Engineering & Surveying. The proposed effluent limitations are consistent with the approved WQMP. A Waste Load Evaluation for the segment has been prepared.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES, September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 1103 and Gum Bayou are currently listed on the State's inventory of impaired and threatened waters (2002 Clean Water Act Section 303(d) list). Gum Bayou is listed for elevated bacteria levels in the entire stream. Segment No. 1103 is listed for elevated bacteria levels and depressed dissolved oxygen in the portion of the Segment above State Highway 3. This discharge is proposed to be located on Gum Bayou which confluences with Segment No. 1103 downstream of the impaired region. Model results indicate that dissolved oxygen in the impaired region will not be significantly impacted by discharge from this facility.

SUMMARY OF EFFLUENT DATA

NA - New Facility

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at an interim volume not to exceed a daily average flow of 0.125 million gallons per day (MGD) in the Interim I phase, not to exceed a daily average flow of 0.250 MGD in the Interim II phase and not to exceed a daily average flow of 0.500 MGD in the final phase.

The effluent limitations in the interim phases of the draft permit, based on a 30-day average, are 10 mg/l CBOD₅, 15 mg/l TSS, 3.0 mg/l NH₃-N, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

Statement of Basis/Technical Summary and Executive Director's Preliminary Decision

The effluent limitations in the final phase of the draft permit, based on a 30-day average, are 10 mg/l CBOD₅, 15 mg/l TSS, 2 mg/l NH₃-N, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC Section 309.13(e).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation. The draft permit authorizes the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application site or co-disposal landfill.

SUMMARY OF CHANGES FROM APPLICATION

None.

SUMMARY OF CHANGES FROM EXISTING PERMIT

NA - New Facility

BASIS FOR PROPOSED DRAFT PERMIT

The following items were considered in developing the proposed permit draft:

1. Application received October 21, 2004 and additional information received November 29, 2004 and December 17, 2004.
2. The effluent limitations and/or conditions in the draft permit comply with the Texas Surface Water Quality Standards, 30 TAC Sections 307.1 - 307.10, (21 TexReg 9765, 4/30/97).
3. The effluent limitations in the draft permit meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chapter 309, Subchapter A: Domestic Wastewater Effluent Limitations.
4. Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.
5. Consistency with the Coastal Management Plan: The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.
6. "Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.
7. Texas 2002 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, February 2005.
8. "TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," Document No. 98-001.000-OWR-WQ, May 1998.

PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application. This notice sets a deadline for public comment.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application contact Amewusika Aku-Clara Dake at (512) 239-4570.

Amewusika Aku-Clara Dake, Permit Coordinator
Municipal Permits Team
Wastewater Permitting Section (MC 148)

March 28, 2005
Date



TPDES PERMIT NO. WQ0014570001
[For TCEQ Office Use Only:
EPA ID No. TX0127248]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Marlin Atlantis White, Ltd.

whose mailing address is

13455 Noel Road, Floor 23
Dallas, Texas 75240

is authorized to treat and discharge wastes from the Marlin Atlantis White, Ltd. Wastewater Treatment Facility, SIC Code 4952

located adjacent to Gum Bayou, approximately 2.14 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County, Texas

to Gum Bayou; thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **September 1, 2010**.

ISSUED DATE:

For the Commission

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of expansion of the 0.250 million gallons per day (MGD) facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.125 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 347 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Avg mg/(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Measurement Frequency	Single Grab Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (10)	15	25	One/week	Grab
Total Suspended Solids	15 (15)	25	40	One/week	Grab
Ammonia Nitrogen	3.0 (3.13)	6	10	One/week	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the completion of the 0.250 MGD facilities and lasting through the expansion to the 0.500 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.250 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 694 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/l(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Measurement Frequency	Single Grab Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (21)	15	25	One/week	Grab
Total Suspended Solids	15 (31)	25	40	One/week	Grab
Ammonia Nitrogen	3.0 (6.26)	6	10	One/week	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the completion of expansion to 0.500 MGD and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.500 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 1389 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/l(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Daily Max. Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	Continuous	Totalizing meter
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (42)	15	25	One/week	Composite
Total Suspended Solids	15 (63)	25	40	One/week	Composite
Ammonia Nitrogen	2 (8.34)	5	10	One/week	Composite

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored daily by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored twice per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§ 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code §§ 5.103 and 5.105, and the Texas Health and Safety Code §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in Section 26.001 of the Texas Water Code and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with a 1 million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
 - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Fecal coliform bacteria concentration - the number of colonies of fecal coliform bacteria per 100 milliliters effluent. The daily average fecal coliform bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the n th root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of fecal coliform bacteria equaling zero, a substituted value of one shall be made for input into either computation method. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
- f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
- g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.

3. Sample Type

- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).
 - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
 5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids which have not been classified as hazardous waste separated from wastewater by unit processes .
 6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form, that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, the Texas Water Code, Chapters 26, 27, and 28, and Texas Health and Safety Code, Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests and calculations shall be accurately accomplished in a representative manner.

3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
 - i. date, time and place of sample or measurement;
 - ii. identity of individual who collected the sample or made the measurement.
 - iii. date and time of analysis;
 - iv. identity of the individual and laboratory who performed the analysis;
 - v. the technique or method of analysis; and
 - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that maybe instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:

- i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
- c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
- d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. One hundred micrograms per liter (100 µg/L);
 - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. Five hundred micrograms per liter (500 µg/L);
 - ii. One milligram per liter (1 mg/L) for antimony;
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:
- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the CWA if it were directly discharging those pollutants;
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
 - c. For the purpose of this paragraph, adequate notice shall include information on:
 - i. The quality and quantity of effluent introduced into the POTW; and
 - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
 - i. Violation of any terms or conditions of this permit;
 - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§ 305.62 and 305.66 and Texas Water Code Section 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC § 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility which does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal Clean Water Act, §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§ 402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the Texas Water Code Chapters 26, 27, and 28, and Texas Health and Safety Code Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in Texas Water Code Section 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or
 - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the Texas Water Code § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit

shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Water Quality Applications Team (MC 161) of the Registration, Review, and Reporting Division.
- b. A permit may be transferred only according to the provisions of 30 TAC § 305.64 (relating to Transfer of Permits) and 30 TAC § 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal which requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to Chapter 11 of the Texas Water Code.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

- a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - i. the permittee;
 - ii. an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
 - iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
- b. This notification must indicate:
 - i. the name of the permittee and the permit number(s);
 - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iii. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.

2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Agriculture and Sludge Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under Texas Water Code § 7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC § 1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities which generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
 - a. Whenever flow measurements for any domestic sewage treatment facility reach 75 percent of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90 percent of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility which reaches 75 percent of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgement of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85 percent, unless otherwise authorized by this permit.
11. Facilities which generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:
- Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
 - Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
 - The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
 - Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.
 - The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
 - The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
 - Volume of waste and date(s) generated from treatment process;
 - Volume of waste disposed of on-site or shipped off-site;
 - Date(s) of disposal;
 - Identity of hauler or transporter;
 - Location of disposal site; and
 - Method of final disposal.
- The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.
12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with Chapter 361 of the Texas Health and Safety Code.

SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) registered or permitted land application site, commercial land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is permitted or registered with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION**A. General Requirements**

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 312 and all other applicable state and federal regulations in a manner which protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants which may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method, which receives the prior approval of the TCEQ for the contaminants listed in Table 1 of 40 CFR Section 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC Region 12) within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 12) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceed the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration (milligrams per kilogram)*</u>
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

- a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC Section 312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC Section 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC Section 312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U. S. Environmental Protection Agency as being equivalent to those in Alternative 5.

- b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1 -

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U. S. Environmental Protection Agency final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the U. S. Environmental Protection Agency, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U. S. Environmental Protection Agency final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The executive director will accept from the U. S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and

- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

- i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
- ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
- iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
- iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
- v. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
- vi. Turf grown on land where sewage sludge is applied shall not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.
- viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
- ix. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC Section 312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following alternatives 1 through 10 for Vector Attraction Reduction.

Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent.

Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. Volatile solids must be reduced by less than 17 percent to demonstrate compliance.

Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. Volatile solids must be reduced by less than 15 percent to demonstrate compliance.

Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.

Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40 degrees Celsius and the average temperature of the sewage sludge shall be higher than 45 degrees Celsius.

- Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.
- Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 9 -
 - i. Sewage sludge shall be injected below the surface of the land.
 - ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.
 - iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.
- Alternative 10-
 - i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
 - ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

C. Monitoring Requirements

- Toxicity Characteristic Leaching Procedure (TCLP) Test - once during the term of this permit
- PCBs - once during the term of this permit

All metal constituents and Fecal coliform or Salmonella sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC Section 312.46(a)(1):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>				<u>Monitoring Frequency</u>
0	≤ Sludge	<	290	Once/Year
290	≤ Sludge	<	1,500	Once/Quarter
1,500	≤ Sludge	<	15,000	Once/Two Months
15,000	≤ Sludge			Once/Month

(*) The amount of bulk sewage sludge applied to the land (dry weight basis).

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC Section 312.7.

SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

A. Pollutant Limits

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

* Dry weight basis

B. Pathogen Control

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

C. Management Practices

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.
2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner which complies with the Management Requirements in accordance with 30 TAC Section 312.44.
3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:
 - a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.
 - b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.
 - c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:
 - a. The location, by street address, and specific latitude and longitude, of each land application site.
 - b. The approximate time period bulk sewage sludge will be applied to the site.
 - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC Section 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludges, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

"I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC Section 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC Section 312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."
6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained.

The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC Section 312.47 for persons who land apply.

1. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC Section 312.47(a)(4)(A)(ii) or 30 TAC Section 312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.
2. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
3. The number of acres in each site on which bulk sludge is applied.
4. The date and time sludge is applied to each site.
5. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
6. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 12) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 1 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. which applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.
15. Amount of sludge land applied in dry tons/year.

16. The certification statement listed in either 30 TAC Section 312.47(a)(4)(A)(ii) or 30 TAC Section 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.
17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
 - a. The location, by street address, and specific latitude and longitude.
 - b. The number of acres in each site on which bulk sewage sludge is applied.
 - c. The date and time bulk sewage sludge is applied to each site.
 - d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
 - e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

- A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a Municipal Solid Waste Landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.
- D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method, which receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR Section 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC Region 12) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 12) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

- E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.
- F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 12) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
7. Owner of disposal site(s).
8. Location of disposal site(s).
9. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

OTHER REQUIREMENTS

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category C facility must be operated by a chief operator or an operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.
3. The permittee is hereby placed on notice that this permit may be reviewed by the Texas Commission on Environmental Quality after the completion of any new intensive water quality survey on Segment No. 1103 of the San Jacinto-Brazos Coastal Basin and any subsequent updating of the water quality model for Segment No. 1103, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Section 305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.
4. The permittee shall comply with the requirements of 30 TAC Section 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC Section 309.13(e).
5. The permittee shall notify the TCEQ Regional Office (MC Region 12) and the Water Quality Applications Team (MC 161) of the Registration, Review, and Reporting Division, in writing at least forty-five (45) days prior to the completion of the new facilities.
6. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
7. Prior to construction of the treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 317.1. If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 317, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2, 2a and 2b of the permit.
8. The permittee shall notify the TCEQ Regional Office (MC Region 12) and the Water Quality Applications Team (MC 161) of the Registration, Review, and Reporting Division in writing at least forty-five (45) days prior to the completion of the new facilities.

ATTACHMENT
B

TCEQ PERMIT/PROPOSED PERMIT NO. WQ0014570001

APPLICATION BY
 MARLIN ATLANTIS WHITE, LTD.
 TPDES Permit No. WQ0014570001

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BEFORE THE
 TEXAS COMMISSION ON
 ENVIRONMENTAL QUALITY

2006 JUL 27 AM 4:19
 CHIEF CLERKS OFFICE

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on Marlin Atlantis White Ltd.'s (Marlin) application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters or comments at the public meeting from the following persons:

Representative Larry Taylor	Ina Barnes
Julie Masters, Mayor of the City of Dickinson (Dickinson)	Orvil and Glenda Barnes
Veta Winick, Mayor of the City of Dickinson (previous)	Mary Dunbaugh
Myron Hess and Christopher Brown on behalf of the National Wildlife Federation (NWF)	Rena Hardage
Stephen H. DonCarlos on behalf of the San Leon Municipal Utility District	Ray and Sherry Jones

Larry McKinney, Ph.D., on behalf of the Texas Parks and Wildlife Department (TPWD)	Bridget Long
Bert Schroeder, on behalf of the B.C. Schroeder Jr., Marital Trust (Schroeder)	Lorna Malone
Sr. Citizens of Tropical Gardens (Sr. Citizens) ¹	Diane Mettlach
Citizens of Tropical Gardens (Tropical Gardens) ²	Stephen Rechkner
Group 1 ³	Danny L. Rodgers
Rena Hardage	Alison Rouse
Pam Williams	Wanda Toole

This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Marlin applied to the TCEQ for a new permit that would authorize Marlin to discharge

¹ See Attachment A.

² See Attachment A.

³ See Attachment A.

treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day (0.5 million gallons per day (MGD)). If the permit is issued, the facility will be an activated sludge process plant operated in the complete mix aeration mode. Treatment units will include bar screens, aeration basins, final clarifiers, sludge digesters, and chlorine contact chambers. The facility has not been constructed.

The wastewater treatment plant (WWTP) will serve a proposed 370 acre development located 2.1 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County. The draft permit authorizes the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application site or co-disposal landfill.

The WWTP site will be located adjacent to Gum Bayou, approximately 2.14 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County, Texas. If the draft permit is issued, the treated effluent will be discharged to Gum Bayou; then to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are high aquatic life uses for Gum Bayou. The designated uses for Segment No. 1103 are high aquatic life uses and contact recreation.

Procedural Background

Marlin submitted an application for a new permit that was received by TCEQ on October 21, 2004 and declared administratively complete on February 22, 2005. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on February 24, 2005 in the *Houston Chronicle*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on July 27, 2005 in the *Houston Chronicle*. The Notice of Public Meeting was published on September 5, 2005 in the *Houston Chronicle*. The public meeting was held on October

6, 2005 in the City of Dickinson. The Executive Director received several comments that the notice of the public meeting was inadequate. The notice met TCEQ's rules for notice; however to ensure the Commission received comments from all interested persons, the public comment period was extended to December 2, 2005. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Representative Taylor expressed concern over the notice of the public meeting on October 6, 2005 and requested that the Executive Director either extend the comment period beyond October 6, 2005 or hold a second public meeting in the City of Dickinson.

RESPONSE 1:

The Executive Director extended the public comment period to December 2, 2005 to give all interested individuals an opportunity to comment on Marlin's permit; the Executive Director opted not to have a second public meeting.

COMMENT 2:

Representative Taylor and Mayor Masters stated that the effluent limits in Marlin's draft permit are not acceptable to Dickinson. According to Representative Taylor, Dickinson believes it is inappropriate for Marlin to have less stringent effluent limits than the recently renovated Dickinson WWTP.

Similarly, Stephen Reckner stated that the effluent from Marlin's WWTP should be of the same quality as Dickinson's, and Rena Hardage stated that she opposed Marlin's proposed effluent

limits.

RESPONSE 2:

Effluent limits for discharge permits are set based on a number of criteria including: the size of the discharge, the discharge location, the ability of the receiving waters to accommodate pollutant loads, watershed rules stipulating minimum levels of treatment, and the impairment status of the receiving waters. For these reasons effluent limits can vary significantly from WWTP to WWTP.

Two major differences between the Dickinson renovated WWTP (Galveston County WCID No. 1, permit number 10173-001) and the proposed Marlin WWTP are: 1) a large difference in permitted wastewater flow, and 2) the location of the outfalls relative to the dissolved oxygen-impaired region of Dickinson Bayou. The Dickinson WWTP is permitted for an effluent flow of 4.8 MGD and discharges near the dissolved oxygen-impaired region of Dickinson Bayou. In contrast, if issued, the Marlin WWTP will have a final phase flow of 0.5 MGD and is located approximately 3.7 miles from the impaired region.

COMMENT 3:

Representative Taylor and Ray and Sherry Jones expressed concern over the potential discharge into Dickinson and Gum Bayous since both bayous are on the 303(d) list.

RESPONSE 3:

Segment No. 1103 and Gum Bayou are currently listed on the state's inventory of impaired and threatened waters (2004 Clean Water Act Section 303(d) list). Gum Bayou is listed for elevated bacteria levels in the entire stream. Segment No. 1103 is listed for elevated bacteria levels and depressed dissolved oxygen in the portion of the Segment above State Highway 3. Marlin's proposed discharge location is on Gum Bayou. Gum Bayou joins Segment No. 1103 downstream of

the impaired region. Model results indicate that dissolved oxygen in the impaired region would not be significantly impacted by Marlin's WWTP. This facility is designed to provide adequate disinfection and when operated properly should not add to the bacterial impairments.

COMMENT 4:

Representative Taylor stated that since both Dickinson and Gum Bayous are impaired due to the bacteria and depressed dissolved oxygen levels, "we must attempt to clean up these waters, not further impair them through increased dumping." Similarly, Schroeder commented that the "potential for serious, long-term problems is very real and calls for thorough assessment of all present conditions and effective planning to eliminate, or at least mitigate, negative consequences."

RESPONSE 4:

TCEQ's rules prohibit new discharges that would cause degradation of the receiving stream.⁴ To ensure the effluent limits in Marlin's draft permit will maintain and protect the existing instream uses, the ED's staff performs an antidegradation review of the receiving waters. A Tier I antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier II review has preliminarily determined that no significant degradation of water quality is expected in Gum Bayou or Dickinson's Bayou, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on

⁴ 30 Texas Administrative Code (TAC) § 307.5(b)(5).

Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and wasteload allocations for water quality limited streams as established in the Texas Surface Water Quality Standards and the water quality management plan.

COMMENT 5:

Julie Masters, Mayor of Dickinson commented that most of the residents that subscribe to a newspaper at all subscribe to *The Galveston Daily News*, not the *Houston Chronicle*. Therefore Mayor Masters requested that further notices be placed in the *Galveston Daily News*.

Rena Hardage and Bridget Long stated that they do not believe that publishing notice in a newspaper that reaches a low percentage of the citizens was appropriate.

RESPONSE 5:

TCEQ's rules provide:

The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge.⁵

Marlin published the NAPD for a Water Quality Permit on July 27, 2005 in the *Houston Chronicle*.

Also, according to TCEQ's rules, the applicant must publish notice of the public meeting in the newspaper of largest circulation in the county in which the facility is located or proposed to be located.⁶ Marlin published the Notice of Public Meeting on September 5, 2005 in the *Houston Chronicle*.

⁵ 30 TAC § 39.551(c)(1).

⁶ 30 TAC § 39.405(f)(1).

COMMENT 6:

Mayor Masters, Rena Hardage, Mary Dunbaugh, and Stephen Reckner requested that TCEQ notify both the upstream and downstream landowners of Marlin's proposed WWTP.

Similarly, the Sr. Citizens asked why they were not properly notified.

Stephen Reckner stated that the landowner list is out of date because he is aware of at least ten errors on the list.

Ed Wright, Bob Atkinson and Bert Schroeder asked why everyone wasn't notified about the public meeting.

RESPONSE 6:

TCEQ's rules provide that the Chief Clerk will mail notice to "the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map."⁷ An application, which must be certified as true and accurate by the applicant, must include a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons.⁸ The ED does not require applicants to continuously update the landowner map one the application is deemed administratively complete.

COMMENT 7:

Mayor Masters asked if a study had been done to compare the impact on Dickinson Bayou and Gum Bayou between septic systems for each lot and a wastewater treatment plant both on a day-to-day basis and during an upset.

RESPONSE 7:

⁷ 30 TAC § 39.413(1).

⁸ 30 TAC §281.5(6).

While TCEQ rules do not require an applicant to perform such a study, WWTPs typically provide superior treatment of raw sewage than septic tanks. To meet its effluent limits, Marlin's WWTP will have to provide secondary treatment involving disinfection. For a proposed development of this type, a WWTP will provide a higher level of environmental protection than a septic tank.

COMMENT 8:

Mayor Masters asked how many WWTP permits the TCEQ had denied and if there are any valid arguments to deny Marlin's permit.

RESPONSE 8:

TCEQ does not deny many WWTP permits because most applicants choose to withdraw their applications if the ED has environmental concerns that cannot be resolved. Since the ED's staff has drafted this proposed permit, staff has determined that the draft permit meets all statutory and regulatory requirements. The draft permit could be revised if new information is received during the public comment period or in a contested case hearing.

COMMENT 9:

Mayor Masters stated that the proposed discharge is detrimental to the habitat, fish and wildlife and plants in the area.

The Sr. Citizens stated that Gum Bayou is a brackish water bayou. The wastewater from Marlin will change the bayou's characteristics, which will result in the crabs, shrimps and fish dying.

Similarly, the individuals in Group 1 asked "how the proposed WWTP would affect the animals that depend [on Bayous]?" They also asked if the runoff from the WWTP would affect the wetlands and migratory birds.

In addition to concern over the wetlands, Lorna Malone specifically asked about the impact of the proposed WWTP on the Brown Pelican and the Rosetta Spoon Bill.

Ray and Sherry Jones stated that the wading birds and other wildlife would be negatively impacted by Marlin's proposed WWTP.

Lorna Malone and Alison Rouse asked what the impact of Marlin's proposed WWTP would be on the livestock that drank the water.

Bert Schroeder asked if the water will be treated, clean and safe for the shrimp, redfish and other wildlife of Galveston Bay.

RESPONSE 9:

The draft permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards and was established to be protective of human health and the environment, provided Marlin operates and maintains the facility according to TCEQ rules and the requirements in the draft permit. As part of the permit application process, ED staff determines the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. In this case, the receiving stream uses are high aquatic life uses for the unclassified receiving water and high aquatic life uses and contact recreation for Segment No. 1103. The ED's staff determined that these uses should be protected if the facility is operated and maintained as required by the draft permit and regulations.

COMMENT 10:

The NWF stated that Marlin's permit could not be issued because TCEQ's modeling for Dickinson Bayou Tidal fails to account for existing dissolved oxygen impairments. Even with the

model's shortcomings, NWF alleges that the model still predicted a prohibited reduction in dissolved oxygen levels.

RESPONSE 10:

Marlin's proposed discharge was evaluated for its potential to affect dissolved oxygen in the dissolved oxygen impaired portion of Dickinson Bayou using a numerical model. The model results indicated that the impact on dissolved oxygen due to the proposed discharge in the impaired region was inconsequential under conditions of low background flow, high water temperatures, and full permitted authorizations from other point sources. These combinations of conditions are those that are normally expected to provide the most pessimistic model predictions.

Additional authorizations to discharge wastewater containing constituents of concern can be permitted into the watershed of 303(d) listed segments if it can be demonstrated that the new discharge is not likely to cause or contribute to the impairment. Factors considered in making this determination may include the degree of hydraulic connection between the discharge point and the listed portion of the Segment, the distance between the discharge point and the impaired region, the persistence of the constituents of concern in the environment; or other factors that would likely mitigate the impact of the discharge on the impaired region.

COMMENT 11:

The NWF commented that Marlin's permit could not be issued because TCEQ's modeling fails to account for nonpoint source discharges.

RESPONSE 11:

No nonpoint sources of oxygen demanding constituents are included in TCEQ's modeling analysis because they are not expected to occur during conditions of low background flow, high

water temperatures, and full permitted authorizations from point sources. The QUAL-TX model used for this evaluation was largely developed from studies performed in the 1980s and is the most appropriate analytical tool for making permitting decisions until the Total Maximum Daily Load (TMDL) project progresses to the point where a better tool becomes available.

COMMENT 12:

Mayor Masters stated that a regional plant would be a better solution. The Sr. Citizens and Edwin Wright also stated that they want a regional WWTP.

The San Leon Municipal Utility District (San Leon) stated that it objects to Marlin's proposed permit because San Leon is in negotiations with Texas City to provide water and sewer service in the area that would be served by Marlin.

Similarly, Schroeder commented that he is concerned that a "hodgepodge" approach of small Municipal Utility Districts is not the best long-term solution for the area.

RESPONSE 12:

TCEQ is mandated to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."⁹ Also, the Texas Water Code provides that in considering the issuance of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area wide or regional waste collection, treatment, and disposal systems not designated as area wide or regional disposal systems by

⁹ TWC § 26.081.

Commission Order.¹⁰

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of WWTPs. Marlin was required to survey a three-mile area surrounding its proposed WWTP to determine if there is a WWTP or sewer collection lines in the area, with sufficient capacity, that Marlin could use. In its application Marlin indicated that there are three WWTPs within three miles of the proposed facility; Via Bayou, Inc., Galveston Co. WCID No. 1, and Bacliff Municipal Utility District. According to Marlin's application, none of the facilities currently have capacity to accept the volume of wastewater proposed by Marlin.

The Commission, however, may not deny an otherwise valid request for a WWTP based on what *might* happen in the future. If a regional WWTP is built in the area and has the capacity to serve Marlin's service area, it would be possible for Marlin to connect to the regional WWTP and dismantle its existing WWTP.

COMMENT 13:

Mayor Masters stated that Dickinson is adamantly opposed to the location of Marlin's proposed WWTP. Mary Dunbaugh and Diane Mettlach also stated that they are opposed to the WWTP being built at the proposed location. Schroeder commented that TCEQ should examine other discharge locations, such as requiring Marlin to pipe its effluent to the main channel of Dickinson Bayou or directly into Galveston Bay. Tropical Gardens suggested that the discharge pipe be relocated to Dickinson Bayou.

The Sr. Citizens suggest that the proposed WWTP be relocated to a "safe place on HL&P discharge channel that is not being used."

¹⁰ TWC § 26.0282.

RESPONSE 13:

Discharges into water in the state are authorized, if the discharger obtains a permit from the Commission.¹¹ TCEQ evaluates applications for WWTPs and discharge locations, based on the information provided in the application to determine if there will be a violation of the Texas Surface Water Quality Standards adopted by the TCEQ to protect human health and the environment. Marlin's proposed WWTP would meet all applicable laws and regulations.

COMMENT 14:

Schroeder commented that TCEQ should not approve Marlin's WWTP until the TMDL study on Dickinson Bayou is complete and a TMDL study is authorized and completed for Gum Bayou.

RESPONSE 14:

The TMDL development process is separate from the TPDES permitting process and proceeds on a different schedule. Processing of wastewater permits are not delayed pending the results of the TMDL study. However, all permits within the scope of the TMDL will be subject to its requirements, if applicable, once the TMDL is finalized and an implementation plan has been developed.

Water quality permitting in 303(d)-listed water bodies is described in the TCEQ regulatory guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (January 2003, RG 194), which is approved by the EPA. According to TCEQ's current policy and procedures, specified in RG-194, issuance of a permit to discharge wastewater into a 303(d)-listed water body may be authorized in the absence of a TMDL. Issuance of a permit may be authorized if the discharge does not contain significant amounts of the listed pollutant or if the discharge is not

¹¹ TWC § 26.121.

directly to the listed portion of the water body and is not close enough to potentially impact the listed area.

The TMDL Program is currently developing a TMDL for Dickinson Bayou and plans to complete the study in the Fall of 2006. Gum Bayou and the Gum Bayou watershed are included in the TMDL study for Dickinson Bayou as a major tributary and sub-watershed of Dickinson Bayou. The TMDL Program also plans to include the potential loadings of biochemical oxygen demand (BOD), nutrients, and Total Suspended Solids (TSS) from Marlin in the load allocation scenarios if the permit is issued. The load allocation scenarios will be conducted as part of the TMDL study of the Dickinson Bayou.

COMMENT 15:

Schroeder stated that it expects the TCEQ to perform an accurate survey of the Bayou depth, volume, and flow.

RESPONSE 15:

TCEQ's modeling staff recognizes that the dimensions provided for Gum Bayou in the application do not represent normal water level conditions. The dissolved oxygen model used to evaluate Marlin's application was developed using water body width dimensions measured from aerial photographs.

COMMENT 16:

Schroeder commented that TCEQ should factor additional or potential wastewater loads into its review of Marlin's application.

RESPONSE 16:

In their analyses, TCEQ modeling staff factors in other existing discharges in their model, but

does not typically include potential discharges.

COMMENT 17:

Schroeder disagrees with Marlin's assertion that Gum Bayou is not tidally affected water.

RESPONSE 17:

Even though Marlin stated that Gum Bayou is not tidally affected, TCEQ staff is aware of its characteristics; therefore, Gum Bayou was assessed as tidal with a high aquatic life use and corresponding 4.0 mg/l dissolved oxygen requirement.

COMMENT 18:

Schroeder disagrees with Marlin's assessment of stream flow as high on 8/25/04. Schroeder asks if the tide change was made over several hours.

RESPONSE 18:

TCEQ staff did not use this information in their analyses of the impact on the receiving stream.

COMMENT 19:

Schroeder disagrees with Marlin's characterization of the water surface width of 200 feet at a point 200 feet above the proposed discharge location. According to Schroeder, the channel of the bayou is less than 70 feet.

RESPONSE 19:

TCEQ modeling staff recognized that the dimensions provided for Gum Bayou in the application did not represent normal water level conditions. The dissolved oxygen model used to evaluate the Marlin Atlantis White, Ltd. application was developed using water body width dimensions measured from aerial photographs.

dimensions measured from aerial photographs.

COMMENT 20:

Schroeder and Tropical Gardens expressed concern that the height of the bridge across Gum Bayou at FM 517 is not sufficient.

RESPONSE 20:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. TCEQ does not have jurisdiction to address bridge construction issues in the wastewater permitting process. Please direct your concerns on this issue to:

Mr. William Babbington, P.E.
Galveston Area Engineer
Texas Department of Transportation
(409) 978-2505

Moreover, if Marlin's permit is issued, the flow in the final phase will be 0.5 MGD. This additional flow is not expected to significantly raise the level of water in Gum Bayou.

COMMENT 21:

Schroeder expressed concerns over odor from Marlin's WWTP.

RESPONSE 21:

To minimize the impact of odor, buffer zones may be used to separate WWTP's from neighboring properties.¹² For a WWTP with the design proposed by Marlin, TCEQ's rules require a buffer zone of 150 feet.¹³ According to the permit application, Marlin owns all of the land located inside the required buffer zone.

¹² 30 TAC § 309.13(e).

¹³ 30 TAC § 309.13(e).

Odors may be associated with organic matter and the biochemical oxygen demand exerted on the receiving stream. The draft permit also requires advanced secondary treatment. The draft permit requires that the wastewater discharge contain a minimum of 4.0 mg/l dissolved oxygen so the treated effluent will be adequately oxygenated when it is discharged. The draft permit also contains operational requirements designed to help ensure the facility is properly operated and maintained. Additionally, Marlin's draft permit requires the treated effluent be disinfected by chlorination, which will help control odor.

Anyone may contact the TCEQ at 1-888-777-3186 or by e-mail at complaint@TCEQ.state.tx.us to report a potential violation of Marlin's permit or TCEQ's regulations. Complaints about the facility or suspected incidents of noncompliance with the permit or TCEQ rules may also be reported to the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizens may also gather data to show that a permittee is not in compliance with TCEQ rules. For more information on citizen collected evidence, please see www.TCEQ.state.tx.us/enforcement/complaints.html

COMMENT 22:

Schroeder asked what remedies and recourse surrounding property owners have through TCEQ.

RESPONSE 22:

Individuals may request a contested case hearing or reconsideration of the Executive Director's decision regarding the draft permit. Both of these options have set response deadlines. If you need more information about the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-678-4041. Additionally, the permit will not authorize any invasion of

personal rights nor any violation of federal, state, or local laws or regulations. Violations of personal rights must be addressed through civil proceedings. Anytime anyone has a concern over any WWTP they may contact the TCEQ Region 12 Office at (713) 767-3500 or toll free at (888) 777-3186.

COMMENT 23:

Orvil and Glenda Barnes, Ina Barnes, Ray and Sherry Jones, Lorna Malone, Pam Williams, Alison Rouse and Wanda Toole expressed concern over flooding of Gum Bayou.

RESPONSE 23:

The permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and monitoring requirements to ensure that the proposed discharge meets water quality standards.

COMMENT 24:

The Sr. Citizens and Tropical Gardens expressed concern that it will be harmful for people to eat fish from the bayou and for children to play in human waste. Similarly, Mary Dunbaugh stated that Marlin's proposed WWTP will adversely affect the recreational uses of Gum Bayou.

RESPONSE 24:

If the Marlin WWTP is operated properly, the uses of the Bayou, including contact recreation and fish consumption, should be maintained. TCEQ's rules, however, acknowledge that "[a] designation of contact recreation is not a guarantee that the water so designated is completely free of disease-causing organisms. ... Even where the concentration of indicator bacteria is less than the criteria for contact recreation, there is still some risk of contracting waterborne diseases."¹⁴

¹⁴ 30 TAC § 307.7(b)(1).

COMMENT 25:

The Sr. Citizens stated that their subdivision will be in danger of having impure water because Gum Bayou and Dickinson Bayou meet in the subdivision during high tides. Their concern is heightened because there are already signs up about human waste and nine people from Tropical Gardens have gotten infections from exposure to the Bayou.

Similarly, Wanda Toole asked if people would be subject to viral or bacterial infections if raw sewage was accidentally discharged to Gum Bayou.

RESPONSE 25:

The ED is unaware of warning signs regarding "human waste" in the area. Nevertheless, properly treated effluent discharged from this facility would comply with regulations adopted to protect human health and the environment. The draft permit also contains provisions to minimize the risk of accidental discharge of raw sewage.

COMMENT 26

The Sr. Citizens expressed concern that Marlin's proposed site floods at high tide. Tropical Gardens stated that Marlin's WWTP should be built above flood waters, and that storm water should be kept out of the WWTP. Similarly, the individuals in Group 1 asked how floods will affect the facility, and Danny Rodgers asked what would happen if a hurricane backs water from the Bayou into the WWTP.

RESPONSE 26:

TCEQ's rules require that either all treatment units at a wastewater treatment facility are constructed above the 100-year flood plain or that protective measures, which are satisfactory to the

constructed above the 100-year flood plain or that protective measures, which are satisfactory to the Executive Director, are taken.¹⁵ In this case, in its application Marlin stated that the proposed wastewater treatment facility will not be located above the 100-year floodplain; however, the chlorination equipment, blowers and all electrical controls will be installed on an elevated platform above the 100-year floodplain and the treatment basins will be located so that the top of the treatment units will be located above the 100-year floodplain. These protective measures are satisfactory to the Executive Director and should protect the facility from a 100 year storm event.

COMMENT 27:

The Sr. Citizens and Tropical Gardens expressed concern that the proposed WWTP will be a package plant, and thus it will not be manned 24/7. Similarly, the individuals in Group 1 asked if the WWTP would be manned 24/7 and if the operator would be State Certified. Bridget Long asked where the operator would be located and how long it would take him to get to the WWTP in case of an emergency.

RESPONSE 27:

TCEQ's rules require owners to employ licensed wastewater operators and the chief operator of each facility is required to hold a specific level of license based on the type of treatment and permitted daily average flow. In this case, Marlin's proposed WWTP must be operated by an operator holding a Category C license or higher.¹⁶ The operator must be present at the facility five days per week and must be available by phone or pager seven days per week. The amount of time per day that the operator is required to be onsite is not stipulated in the rules and an operator is not

¹⁵ 30 TAC § 317.1(b)(4)(E)(i).

¹⁶ 30 TAC § 30.350(e).

required to be onsite 24 hours a day.

COMMENT 28:

Tropical Gardens stated that "Gum Bayou is little more than a drainage ditch and is not deep enough to handle 500,000 gallons of wastewater per day."

RESPONSE 28:

At the point of Marlin's discharge Gum Bayou exhibits characteristics typical of a bayou. Upstream of Marlin's discharge point, Gum Bayou is no longer tidally influenced and narrows to a ditch.

COMMENT 29:

Tropical Gardens stated that Dickinson Bayou is not deep in front of its subdivision.

RESPONSE 29:

TCEQ does not consider the actual depth of the receiving water downstream of the discharge location in the TPDES permitting process.

COMMENT 30:

Tropical Gardens stated that the WWTP's capacity should be 50% over the minimum.

RESPONSE 30:

The design criteria used to properly size a wastewater treatment facility is specified in 30 TAC §317.4. As part of the application process, applicants are required to provide sufficient justification of the need for the permit, if sufficient justification is not provided the Executive Director may recommend denial of the application. The flow justification is based on a daily wastewater flow of 100 gallons per person. In its application Marlin indicated that the service area would include approximately 1400 connections and would serve 5000 individuals. Marlin will not

be authorized to construct a WWTP with additional treatment capacity.

COMMENT 31:

The individuals in Group 1 asked what will happen if the system fails, and if there will be a back-up system. Similarly, Lorna Malone asked if there would be a "State of the Art" backup system.

RESPONSE 31:

Marlin will be required to minimize the possibility of an accidental discharge of untreated wastewater. For example, Marlin must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternative power sources, standby generators, or retention of inadequately treated wastewater. The WWTP will be required to have a backup power source. It must have at least two power sources in case the electrical system fails.

The final design of the WWTP will include details concerning the automated systems and backup procedures. The design criteria in 30 TAC Chapter 317 require maintenance and operation systems for the facility; however, this information is not required in the wastewater permit application or the initial design of the facility. Marlin must meet all design criteria in TCEQ's rules.

COMMENT 32:

The individuals in Group 1 asked "how the proposed WWTP would affect people who are on wells?" Lorna Malone and Alison Rouse asked about the impact of the WWTP to people on private wells.

REPOSNE 32:

If the permit is issued, the discharge to surface water from Marlin's WWTP should not have

any impact on groundwater or private water wells. The effluent limits in Marlin's draft permit were designed to be protective of aquatic life and human health. Since Marlin's discharge will be to surface water, if it is protective of aquatic life and human health, it will also be protective of groundwater.

COMMENT 33:

Bridget Long asked what kind of disinfectant Marlin intends to use in the WWTP.

RESPONSE 33:

The draft permit requires that Marlin use chlorine to disinfect its effluent prior to discharge. Chlorination of the treated effluent is required for disinfection and to reduce pathogenic organisms. According to Marlin's draft permit, the effluent must be chlorinated in a chlorine contact chamber and must have a chlorine residual of 1.0 mg/l with a minimum detention time of 20 minutes. The chlorine residual must be monitored five times per week by grab sample in the Interim I and Interim II phases and daily by grab sample in the Final phase.

COMMENT 34:

Ina Barnes expressed concern about the chlorine that is used to treat the wastewater entering Gum Bayou. Similarly, Stephen Reckner stated the non-dechlorinated water will be very detrimental to aquatic wildlife.

RESPONSE 34:

If Marlin's permit is issued, its discharge should not have a negative impact on aquatic organisms. EPA has determined that long term exposure to chlorine concentrations above 4 mg/l may produce toxic effects on aquatic organisms. Marlin's draft permit limits the chlorine residual (the amount of chlorine in the effluent when it is actually discharged to the receiving water) to 4.0

mg/l after a minimum detention time of 20 minutes.

This chlorine concentration may be found in the immediate area of the discharge, but aquatic organisms should not be in contact with chlorine at this concentration for extended periods of time. Therefore, the discharge from this proposed facility is not expected to have toxic effects on aquatic organisms.

COMMENT 35:

Stephen Reckner stated that the “[M]etrics presented for Gum Bayou’s transects and depths appear to be inaccurate and misrepresent that the bayou as full flowing and of much larger volume than it truly is. TCEQ Hydrologists have described it as ‘fairly stagnant’.”

RESPONSE 35:

TCEQ Modeling Staff recognized that the dimensions provided for Gum Bayou in the application did not represent normal water level conditions. The dissolved oxygen model used to evaluate the Marlin Atlantis White, Ltd. application was developed using water body width dimensions measured from aerial photographs.

COMMENT 36:

Wanda Toole asked what would happen to the environment if raw sewage was accidentally discharged to Gum Bayou.

RESPONSE 36:

If Marlin’s WWTP is properly operated and maintained, there should not be a discharge of raw sewage. If there was an accidental discharge of raw sewage, however, bacterial levels could become elevated and dissolved oxygen could be depleted.

COMMENT 37:

Wanda Toole asked who would run the WWTP, ensure that it was run properly and repaired as needed.

RESPONSE 37:

If the permit is issued, Marlin will be responsible for providing a licensed operator that meet the requirements of 30 TAC Chapter 30 (Occupational Licenses and Registrations), and for assuring the wastewater treatment facility is operated and maintained properly. In this case, Marlin's proposed WWTP must be operated by an operator holding a Category C license or higher.¹⁷ The operator must be present at the facility five days per week and must be available by phone or pager seven days per week.

COMMENT 38:

Schroeder and Stephen Reckner expressed concern over visual nuisance from Marlin's WWTP.

Schroeder expressed concern that the developer may use ground water for its development. According to Schroeder, the use of ground water would be a serious issue because the development is in the Harris/Galveston County Subsidence District, where subsidence is an issue. The Sr. Citizens also expressed concern over subsidence and old data being used.

Schroeder stated that since the development will result in 110 acres becoming impervious cover, the developer must provide adequate detention to alleviate flooding and non-point source pollution.

The Sr. Citizens stated that the site of Marlin's proposed WWTP had been used for drilling

¹⁷ 30 TAC § 30.350(e).

and drums were left. The Sr. Citizens asked when the site was cleaned up and if it was toxic.

The Sr. Citizens also asked why the Health Department and Texas Parks and Wildlife were not asking questions. Danny Rodgers asked why Texas City did not comment on the proposed WWTP.

The Sr. Citizens and Bridget Long asked why infections are occurring from the bayou.

Ina Barnes and Wanda Toole asked if the bayou would be dredged.

Stephen Reckner expressed concern that Marlin's proposed WWTP will lower property values.

Danny Rodgers asked if the developer was going to raise the land where the houses will be built.

Stephen Reckner asked if there had been "a hydrologic evaluation regarding the pumping action of the tides during low rainfall periods that will inventory Gun Bayou with the treatment plants?"

RESPONSE 38:

The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. TCEQ does not have jurisdiction to address concerns such as those listed in Comment 38 above in the wastewater permitting process.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Acting Director
Environmental Law Division



Kathy Humphreys-Brown, Staff Attorney

Environmental Law Division

State Bar No. 24006911

P.O. Box 13087, MC 173

Austin, Texas 78711-3087

(512) 239-3417

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Attachment A

SR. CITIZENS TROPICAL GARDENS	
Bennett, Carl and Tom	Gutierrez, Betty
Brautigam, Kelly	Hagan, Bobbie
Burrows, Linda	Lewis, Art, Janice
Coots, L.L.	Long, Bridget
Dayton, Mr. and Mrs. Matthew	Long, Dudley
Dayton, Tom and Carol	Pajaki, Dawn
Evans, Mason	Patterson, James
Garcia, Dione	Patterson, Janice
Garcia, Lynn	Sampson, Robert
Griffith, Carl	Starz, Louis
	4 Concerned Citizens

CITIZENS OF TROPICAL GARDENS	
Baier, Dee and David	Long, Emma
Bautista, Aljandro	Long, Dudley
Bernal, Hillarie	Mecher, Dorothy
Bond, L. David	Mendy, Leond
Daniel, Gloria	Miller, Jodie
Garcia, Diane	Patterson, John
Gutierrez, Betty	Rodgers, Danny
Hagar, Bobbie	Starz, Louis
	Villonso, J.

GROUP 1	
Barnes, Orvil and Glenda	Rodgers, Danny
Bartistia, Alezandro	Sanchez, Pedro
Bryant, Mike	Sanchez, Rubu
Fennelly, Jason	Spencer, Jesse
Kelley, Scott	Van Levlen, Captain Gary and Renée
Kressley, John and Janet	Wagan, Bobbie
Patterson, John	Williams, Pam
Perra, James and Linda	

ATTACHMENT
C

Marlin Atlantis White Response to Hearing Requests Map requested by TCEQ Office of Legal Services for Commissioners Agenda



Protecting Texas by
Reducing and
Preventing Pollution

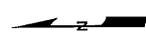
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
September 21, 2006

0 250 500 1,000 1,500 2,000 Feet
Projection: Texas Statewide Mapping System
(TSMS)
Scale 1:20,000

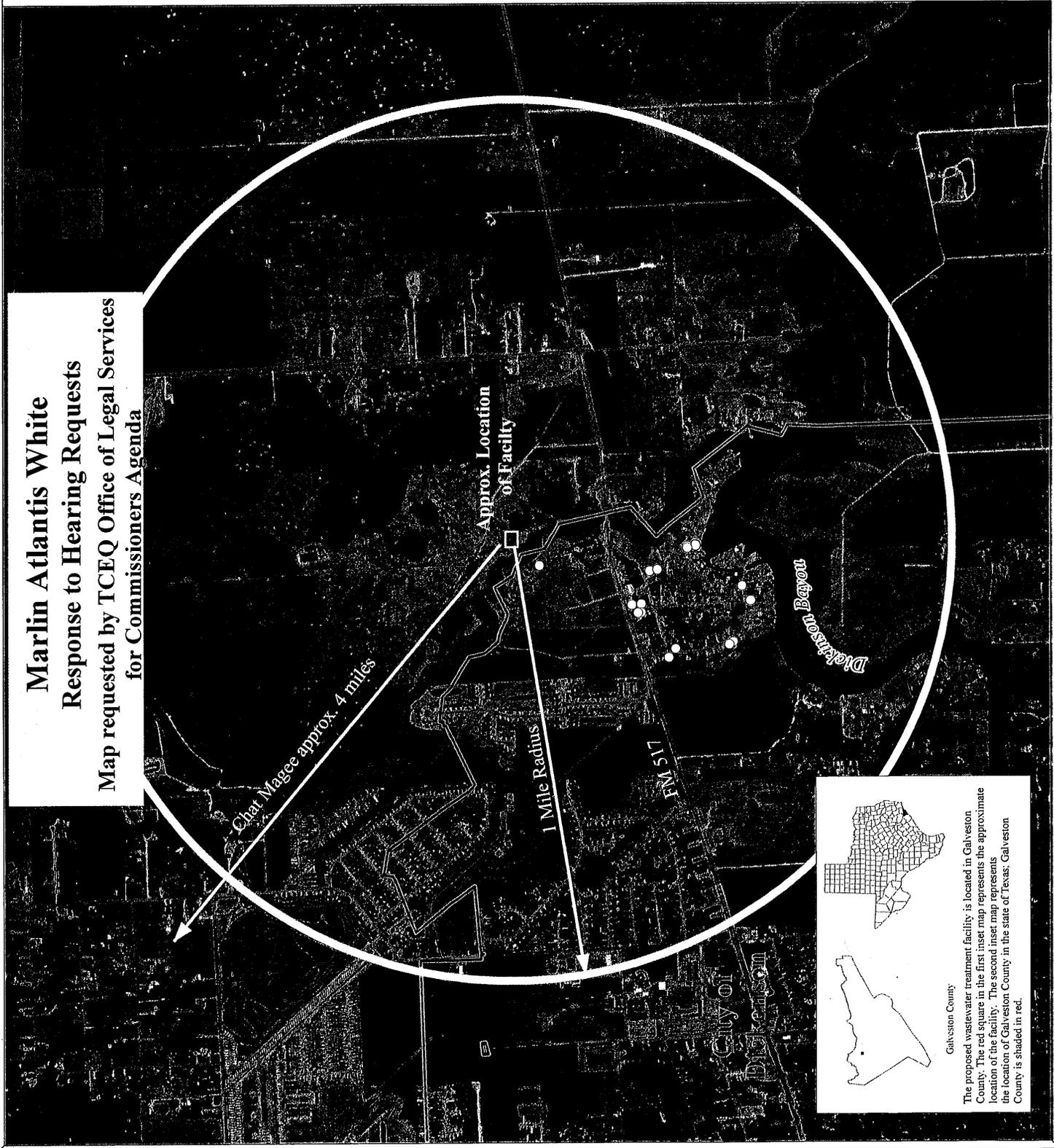
Legend
○ Requestor
○ Plant

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is bc339_1-1.

This map depicts the following:
(1) The approximate location of the proposed facility located in Galveston County. This facility is labeled "Approximate Location of facility".
(2) The approximate location of the requestors.
(3) A circle depicting the one mile radius from the facility. This is labeled "1 Mile Radius".
(4) An arrow depicting the distance from the facility to a requestor not on the map. This is labeled "Chat Magee approx. 4 miles".



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



Galveston County

The proposed wastewater treatment facility is located in Galveston County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Galveston County in the state of Texas; Galveston County is shaded in red.