

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 8, 2006

TO: Persons on the attached mailing list.

RE: Marlin Atlantis White, Ltd.
TPDES Permit No. WQ0014570001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. *The Executive Director's Response to Comments was previously mailed on August 2, 2006; however due to an administrative error, not every copy was complete. If you received a complete copy, please disregard this copy.* A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Dickinson City Hall, 2716 Farm-to-Market Road 517 East, Dickinson, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

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

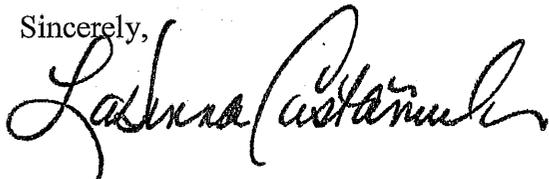
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

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TPDES Permit No. WQ0014570001

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17324A HIGHWAY 3
WEBSTER TX 77598-4133

WARREN TRAHAN
2121 CASA RIO CIR
DICKINSON TX 77539-6724

GARY WEEKS
5206 PARK AVE
DICKINSON TX 77539-7040

DANA & VINCENT STRADA
4200 WHISPERING DR
DICKINSON TX 77539

ANGELOJ & ARLENE TRAMUTO
2113 OLEANDER DR
DICKINSON TX 77539-6762

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

STEPHEN WELLS
4719 PARK AVE
DICKINSON TX 77539-6939

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

RANCE WHELPHLEY
4416 SCENIC DR
DICKINSON TX 77539-3691

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

RICHARD WHITE
4608 PARK AVE
DICKINSON TX 77539-6938

JENNIFER WRIGHT
2132 CASA RIO CIR
DICKINSON TX 77539-6770

CARLTON WILLIAMS
4901 PARK AVE
DICKINSON TX 77539-6943

LINDA WRIGHT
2122 CASA RIO CIR
DICKINSON TX 77539-6725

PAM WILLIAMS
PO BOX 985
DICKINSON TX 77539

SUSAN WILLIAMS
2138 CASA RIO CIR
DICKINSON TX 77539-6770

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

VETA WINICK MAYOR
CITY OF DICKINSON
2716 FM 517 RD E
DICKINSON TX 77539-8615

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

CORALOU WRIGHT
5000 PARK AVE
DICKINSON TX 77539-7013

TCEQ PERMIT/PROPOSED PERMIT NO. WQ0014570001

APPLICATION BY § BEFORE THE
 MARLIN ATLANTIS WHITE, LTD. § TEXAS COMMISSION ON
 TPDES Permit No. WQ0014570001 § 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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 once 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.

RESPONSE 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 Rodges 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

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS
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QUALITY

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CHIEF CLERK'S OFFICE

Attachment A

SR. CITIZENS TROPICAL GARDENS	
Bennett, Carl and Tom	Gutierrez, Betty
Brautigam, Kelly	Hagan, Bobbie
Burrows, Linda	Lewiski, 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	