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LIVINGSTON & LIVINGSTON

A TEXAS L.L.C.

ATTORNEYS AT LAW

1770 ST. JAMES PLACE, SUITE 100
HOUSTON, TEXAS 77056-3405

HR OPA
OCT 15 2007
BY [Signature]
TELEPHONE (713) 783-6919
FACSIMILE (713) 862-9587

October 9, 2007

Office of the Chief Clerk
MC 105, TCEQ
P.O. Box 13087
Austin, TX 78711-3087

Via Certified Mail/RRR
7004 1160 0002 8465 4954

CHIEF CLERKS OFFICE
2007 OCT 12 PM 2:48
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Re: Application for Proposed Permit No. WQ00 14804-001
Dolphin Cove WWTP
Comments and Request from Roy B. and Kathleen Robinson**

Dear Chief Clerk:

This firm represents Roy B. Robinson and Kathleen Robinson, husband and wife, who are landowners in the area affected by the referenced permit application and facility. This letter is provided in opposition to the Application. All communication concerning this matter should be directed to Phillip R. Livingston at the address and telephone numbers printed above.

Mr. and Mrs. Robinson own real property, including commercial and marine industrial property, on the south side of Avenue S, east of 28th Street and west of 27th Street, less than 100 yards from the proposed facility. I have included a colored map for your reference. The Robinson's also own a residential homestead on Avenue P, west of Highway 517. This is also indicated on the enclosed color coded map.

According to the Application and our understanding of the Application, the Dolphin Cove WWTP intends to deliver all of its outflow into a 4 foot deep ditch on the south side of its property abutting the north right of way of Avenue S. The Application indicates that the ditch flows eastward toward the Robinsons' property and empties into Dickinson Bayou. There are several problems with the Application and its intended flow of treated sewage.

1. The treated sewage must flow over the Robinson's private property;
2. That portion of the Robinson's property is a restored wetlands pursuant to Federal Court order;
3. With the tidal flow from Dickinson Bay into Dickinson Bayou, the level of water in the ditch may rise or fall, there is not consistent drainage from the ditch into Dickinson Bayou; and
4. Within the outflow area in Dickinson Bayou are fish, oyster beds and other sea life harvested or fished by locals and visitors alike.

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Since at least 1974, the Robinsons have owned approximately 7 acres of real property in the San Leon Farm Home Tracts on Dickinson Bayou, in what is now the City of Texas City since annexation in 2005. This property is approximately 100 yards from the proposed facility property. Approximately 5 of those acres are and have been continually utilized in the Robinsons' various marine and construction businesses. The address for this property is 2700 Avenue S, City of Texas City, Texas. The remainder 2 acres are in Dickinson Bayou at the outflow of the ditch from that part of Avenue S from 29th Street east into Dickinson Bayou. The Robinsons have not been requested to give permission and formally refuse to give permission to any waste water treatment business which attempts to drain their treated waste water over the Robinsons' private property. The flow of treated sewage is materially different from the natural flow of rainwater through the ditch and the Robinsons object to the use of their private property for any third party's private, profit driven, commercial use. **To the extent necessary and appropriate, the Robinsons make a formal request for a Contested Case Hearing as described in the Notice of Application issued September 20, 2007.**

Further, as the result of litigation with the United States government, the Robinsons restored these 2 acres to wetlands, including planting grasses appropriate to the area and the natural habitat. The use of this property for profit driven, commercial purposes (including if not especially the outflow of treated sewage) would be a violation of that order and of the intent of the parties in reaching the resolution by which the 2 acres were restored to wetlands. The Robinsons, at their own expense, have maintained the 2 acres as wetlands and have abided by the Federal Court order and prevented others from using the wetlands for any purpose other than as natural wetlands. To allow the use of the wetlands as an outflow of a private, profit driven, waste water treatment plant would change the nature of the wetlands and the property, in addition to allowing a commercial third party to profit from the use of the Robinsons' private property. For these reasons arising from the Robinsons private ownership and maintenance of the wetlands over which the treated sewage must flow, which is not addressed in the Application, this Application should be denied.

The Application appears to contend that treated sewage dumped into the ditch will always flow away from the facility and into Dickinson Bayou to be taken out to Dickinson Bay and then into Galveston Bay. However, with tidal flow from Galveston and Dickinson Bays, the natural level of Dickinson Bayou changes, causing the water level in the ditch to naturally rise or fall as water flows into the ditch from the Bayou. Discharge of treated sewage into the ditch while the tide is rising would result in standing treated sewage water or would have to alter the natural flow of water in the ditch and into Dickinson Bayou. Absent reliable information on the effects of the intended 950,000 gallons of treated sewage into the tidal flow, a credible decision cannot be made on this Application.

As wetlands, the grasses and other habitats now on the property sustain various life forms and supply a variety of benefits to other life forms in the area, which have adapted to the natural tidal flow. This includes fish, turtles, birds and various land animals. The change in water flow from a commercial, profit driven, private waste water treatment facility placing 950,000 gallons a day into

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the ditch would materially change the flow patterns and alter the conditions in the wetlands, even if the water quality of any test sample is not otherwise considered harmful to the marine life and environment. In addition, in that area of Dickinson Bayou immediately in front of these two acres there is an oyster bed which would be affected by the regular and voluminous flow of treated sewage. That outflow area in Dickinson Bayou, known regionally, if not nationally, as Redfish Cove, would be altered by the constant flow of treated sewage, which would change the nature of the water and water movement in the cove, thereby potentially altering the fish and other wildlife in the cove, without regard to any changes in specific water sample quality. There is nothing in the Notice or the Application which indicates the effect (adverse or otherwise) from the regular, constant flow of 950,000 gallons of treated sewage through an open air, dirt bottomed, drainage ditch over the wetlands and into the outflow area of Dickinson Bayou. Absent such information, no credible decision can be made on this Application.

The Robinsons respectfully oppose the placement of the Dolphin Cove WWTP at this location for the reasons stated. Further the Robinsons would also state the following.

The Dolphin Cove WWTP appears to be part of the projected development for the reserved area indicated on the enclosed colored map [also named Dolphin Cove]. This area is a project in excess of 300 acres, much of which sits directly on Salt Bayou to the north. The discharge into Salt Bayou should not affect restored wetlands, should not affect existing private property owners, and should not be dependent upon the flow of a storm drainage ditch. The selection of the particular property for the placement of the Dolphin Cove WWTP is apparently an attempt to remove the WWTP facility from the Dolphin Cove development and to place the burden of that WWTP as far away from Dolphin Cove as they can. However, by doing so, Dolphin Cove and Dolphin Cove WWTP have not addressed the use of the Robinsons' private property for their profit driven commercial business interests, have not properly addressed the effect of the outflow of treated sewage on nearby property owners and have not properly addressed the issues of drainage and the affect of altered water flow on wildlife and the environment.

The Robinsons oppose the placement of the Dolphin Cove WWTP on this site and for this purpose and request that the WWTP intended to benefit the Dolphin Cove real estate development be relocated to within Dolphin Cove where none of the Robinsons's concerns are evident.

On a matter concerning the Notice of Application, the address contained in the September 20, 2007, Notice of Application contains an incomplete ZIP code for the TCEQ address. This incomplete ZIP code may affect the ability of some commentors or requestors to properly deliver their comments in a timely manner. I do not know whether any newspaper publication corrected this error or continued it.

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Your attention to these comments, concerns and requests is greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read 'P. Livingston', with a long horizontal flourish extending to the right.

Phillip R. Livingston

PRL/aaa
Enclosure

cc: Ms. Cindy Cavasos
Texas Commission on Environmental Quality
Water Quality Division
P.O. Box 13087
Austin, TX 78711-3087

Mr. Jeff Goebel
South Central Water Company
P.O. Box 570177
Houston, TX 77257-0177

