

DOCKET NO. 2022-0324-MWD

APPLICATION BY
CRYSTAL SPRINGS WATER CO.
FOR NEW TPDES PERMIT
NO. WQ0016005001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

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 Crystal Springs Water Co. (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016005001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Luke Budd and Brent Liedtke.

Attached for Commission consideration is a satellite map of the area.

II. Description of Facility

Crystal Springs Water Co., Inc has applied for new Texas Pollutant Discharge Elimination System Permit No. WQ0016005001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day.

The treated effluent will be discharged to an unnamed tributary of Caney Creek, thence to Caney Creek in Segment No. 1010 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for unnamed tributary and high aquatic life use for Caney Creek. The designated uses for Segment No. 1010 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 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 2 review has preliminarily determined that no significant degradation of water quality is expected in Caney Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The facility will be located approximately 0.25 mile north of the intersection of Crockett Martin Road and Farm-to-Market Road 2090, in Montgomery County, Texas 77306.

Outfall Location:

<u>Outfall Number</u>	<u>Latitude</u>	<u>Longitude</u>
001	30.264444 N	95.298055 W

The draft permit authorizes a discharge of treated domestic wastewater at an Interim I volume not to exceed a daily average flow of 0.25 MGD, an Interim II volume not to exceed a daily average flow of 0.50 MGD and a Final volume not to exceed a daily average flow of 0.75 MGD.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃-N), 63 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). In the Interim I phase, the effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. In the Interim II and Final phases, the effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and be dechlorinated to a level less than 0.1 mg/l total chlorine residual.

III. Procedural Background

The application was received by TCEQ on June 18, 2021, and declared administratively complete on July 26, 2021. The application was determined to be technically complete on September 17, 2021. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on July 30, 2021, in the *Houston Chronicle dba Conroe Courier*, and in Spanish on August 3, 2021, in *Buena Suerte Newspaper*. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English on November 11, 2021, in *Houston Chronicle dba Conroe Courier*, and in Spanish on November 16, 2021, in *Buena Suerte Newspaper*. The public comment period ended on December 16, 2021.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

whether the requestor is an affected person;
which issues raised in the hearing request are disputed;
whether the dispute involves questions of fact or of law;
whether the issues were raised during the public comment period;
whether the hearing request is based on issues raised solely in a public comment 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 Comment;
whether the issues are relevant and material to the decision on the application; and
a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

request a contested case hearing; and

list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the

requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/“Affected Person” Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected” person. 30 TAC § 55.203 sets out who may be considered an affected person. For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

whether the interest claimed is one protected by the law under which the application will be considered;

distance restrictions or other limitations imposed by law on the affected interest;

whether a reasonable relationship exists between the interest claimed and the activity regulated;

likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

likely impact of the regulated activity on use of the impacted natural resource by the person;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

the merits of the underlying application and supporting documentation in the commission’s administrative record, including whether the application meets the requirements for permit issuance;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

D. Referral to the State Office of Administrative Hearings

“When the Commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

- involves a disputed question of fact or a mixed question of law and fact;
- was raised during the public comment period by an affected person whose hearing request is granted; and
- is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of the Request

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestors qualify as an affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Hearing Request Complied with Section 55.201(c) and (d).

Luke Budd and Brent Liedtke submitted a timely hearing request. However, they did not raise issues during the public comment period that are within TCEQ’s jurisdiction and did not identify a personal justiciable interest affected by the application. Therefore, the Executive Director concludes that the hearing request of Luke Budd and Brent Liedtke does not substantially comply with the section 55.201(c) and (d) requirements.

Luke Budd

According to the information provided by Luke Budd, his property is adjacent to the proposed discharge route. Additionally, the property address listed is on the downstream landowner map. The issues that Luke Budd raised included flooding, TCEQ’s compliance with statute, blocked access to the property, land use concerns, and a comparison to the Conroe ISD facility. However, the issues raised by Mr. Budd either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that Mr. Budd has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Mr. Budd’s request does not demonstrate that he has an interest not common to members of the general public. Thus, he is not an affected person, and his issues are not referable.

The Executive Director recommends the Commission find that Luke Budd is not an affected person.

Brent Liedtke

According to the information provided by Brent Liedtke, he lives on the property that is adjacent to the proposed discharge route. Additionally, the property

address listed is on the downstream landowner map. The issues that Brent Liedtke raised included flooding, TCEQ's compliance with statute, blocked access to the property, land use concerns, and a comparison to the Conroe ISD facility. However, the issues raised by Mr. Liedtke either did not raise any issues that are protected by the law under which the application will be considered or are too vague to demonstrate that Mr. Liedtke has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As a result, Mr. Liedtke's request does not demonstrate that he has an interest not common to members of the general public. Thus, he is not an affected person, and his issues are not referable.

The Executive Director recommends the Commission find that Brent Liedtke is not an affected person.

B. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The Executive Director does not recommend referring any issues to SOAH.

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VII. Conclusion

The Executive Director recommends the following action by the Commission:

Find Luke Budd and Brent Liedtke not as affected persons and deny their hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 9, 2022, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0016005001 by Crystal Springs Water Co. was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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Attachment A

