

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

December 13, 2022

Aubrey Pawelka

VIA EFILE TEXAS

Cody Faulk

VIA EFILE TEXAS

Vic McWherter

VIA EFILE TEXAS

Brent Liedtke and Luke Budd  
17278 Farm to Market Road 2090  
Conroe, Texas 77306

VIA REGULAR MAIL  
and COURTESY EMAIL

Luke Budd  
17714 Red Oak Drive  
Houston, Texas 77090

VIA REGULAR MAIL

**RE: SOAH Docket No. 582-22-04282; TCEQ Docket  
No. 2022-0324-MWD; Application by Crystal Springs Water  
Company, Inc. for TPDES Permit No. WQ0016005001**

Dear Parties:

Please find attached a Proposal for Decision on Summary Disposition (PFD) in this case. Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

This matter has been designated **TCEQ Docket No. 2022-0324-MWD; SOAH Docket No. 582-22-04282**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs, and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**IN RE: 2022-0324-MWD**

**APPLICATION BY CRYSTAL SPRINGS  
WATER COMPANY, INC.  
FOR TPDES PERMIT NO. WQ0016005001**

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**PROPOSAL FOR DECISION ON SUMMARY DISPOSITION**

Crystal Springs Water Company, Inc. (Applicant) filed an application (Application) with the Texas Commission on Environmental Quality (Commission or TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016005001 (Draft Permit) to release treated domestic wastewater from a proposed plant site (Facility) located in Montgomery County, Texas.

Protestants, Brent Liedtke and Luke Budd, opposed the Application. The Commission determined that the Protestants were affected persons, granted their hearing request, and referred the matter to the State Office of Administrative

Hearings (SOAH) for hearing on two issues: (1) whether the proposed location for the Facility complies with the 100-year flood plain location standards found in 30 Texas Administrative Code section 309.13(a); and (2) whether the Draft Permit is adequately protective of water quality.

Applicant filed a Motion for Summary Disposition (MSD) requesting a Proposal for Decision (PFD) in its favor as a matter of law. After considering the pleadings, evidence, and the applicable law, the Administrative Law Judge (ALJ) granted the MSD on November 29, 2022, and finds the Commission should issue the Draft Permit without alterations.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

No party contested the Commission's jurisdiction to act on the Application or SOAH's jurisdiction to convene a hearing and prepare a PFD. In addition, no one contested the adequacy of notice regarding the Application or the hearing. Therefore, the ALJ will address these issues only in the findings of fact and conclusions of law in the Proposed Order attached to this PFD.

Applicant filed the Application on June 18, 2021. The Executive Director (ED) of the Commission determined the Application was administratively complete on July 26, 2021, and technically complete on September 17, 2021, and prepared the Draft Permit. On June 22, 2022, the Commission referred the Application to SOAH for a contested case hearing.

On September 12, 2022, a preliminary hearing was convened in this case via videoconference by SOAH ALJ Katerina DeAngelo. The administrative record and jurisdictional documents were admitted into evidence. The ALJ noted jurisdiction and admitted Applicant, the ED, the Office of Public Interest Counsel, Brent Liedtke, and Luke Budd as parties.

A second preliminary hearing was convened via videoconference by ALJ DeAngelo on November 28, 2022, at which Applicant reurged its MSD on the basis that no party presented any evidence to rebut its prima facie case and the ALJ took oral arguments of parties.<sup>1</sup> On November 29, 2022, the ALJ issued the Order Granting Motion for Summary Disposition,<sup>2</sup> and the record closed on that same date.

## **II. APPLICABLE LAW, BURDEN OF PROOF, AND PRIMA FACIE CASE**

Applicant, as the moving party, bears the burden of proof by a preponderance of the evidence.<sup>3</sup> The Application was filed after September 1, 2015, and the Commission referred it to SOAH under Texas Water Code section 5.556, which governs referral of environmental permitting cases to SOAH.<sup>4</sup> Therefore, this case

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<sup>1</sup> Protestants, Brent Liedtke and Luke Budd, did not appear at the second preliminary hearing and did not file any response to the MSD.

<sup>2</sup> The Order Granting Motion for Summary Disposition superseded the Order Denying Motion for Summary Disposition, issued on November 4, 2022.

<sup>3</sup> 30 Tex. Admin. Code § 80.17(a); 1 Tex. Admin. Code § 155.427.

<sup>4</sup> Tex. Water Code §§ 5.551(a), .556.

is subject to Texas Government Code section 2003.047(i-1)-(i-3), as enacted in 2015, which provides:

- (i-1) In a contested case regarding a permit application referred under Section 5.556 [of the] Water Code, the filing with [SOAH] of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:
  - 1) the draft permit meets all state and federal legal and technical requirements; and
  - (2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.
  
- (i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:
  - (1) relates to . . . an issue included in a list submitted under Subsection (e) in connection with a matter referred under Section 5.556, Water Code; and
  - (2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.
  
- (i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.<sup>5</sup>

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<sup>5</sup> *Accord* 30 Tex. Admin. Code § 80.17(c).

Although this law creates a presumption, sets up a method for rebutting that presumption, and shifts the burden of production on that rebuttal, it does not change the underlying burden of proof. The burden of proof remains with Applicant to establish by a preponderance of the evidence that the Application would not violate applicable requirements and that a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.<sup>6</sup>

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), which are collectively referred to as the prima facie demonstration, were offered and admitted into the record at the preliminary hearing.<sup>7</sup>

Summary disposition of a contested case shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.<sup>8</sup>

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<sup>6</sup> 30 Tex. Admin. Code § 80.17(a), (c).

<sup>7</sup> See ED Exs. 1-4.

<sup>8</sup> 30 Tex. Admin. Code § 80.137(c).

### **III. SUMMARY DISPOSITION EVIDENCE**

Applicant presented uncontested summary disposition evidence establishing the following relevant facts.

The description of the Facility and the Draft Permit is based on descriptions in the administrative record. New TPDES Permit No. WQ0016005001 would authorize discharge from the Facility of treated domestic wastewater at a daily average flow not to exceed 0.25 million gallons per day (MGD) in the Interim I Phase, 0.50 MGD in the Interim II Phase, and 0.75 MGD in the Final Phase. The Facility, which has not been constructed, 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.

The Facility would be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim I Phase will include one bar screen, one aeration basin, one final clarifier, one sludge digester, and a chlorine contact chamber. Interim II Phase and Final Phase will be an exact duplicate of the Interim I Phase with flow first going through a flow splitter box. Dichlorination will also be added in the Interim II Phase and Final Phase. Sludge generated from the Facility would be hauled by a registered transporter and disposed of at a TCEQ-permitted solid waste processing facility, Mt. Houston Municipal Utility District Wastewater Treatment Facility. The Draft Permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

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, 15 mg/l total suspended solids, 3 mg/l ammonia-nitrogen, 63 colony forming units or most probable number of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen. 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.

The treated effluent will be discharged to an unnamed tributary of Caney Creek, then 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. TCEQ found that the effluent limitations in the Draft Permit will maintain and protect the existing instream uses.

In accordance with 30 Texas Administrative Code section 307.5 and the TCEQ implementation procedures for the Texas Surface Water Quality Standards (TSWQS), 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 and 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, and that existing uses will be maintained and protected.

TCEQ found that the end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with the TSWQS for pH when the discharge authorized is from a minor facility. TCEQ further found that the discharge from the Facility 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.

Segment No. 1010 is not currently listed on the State's inventory of impaired and threatened waters. TCEQ determined that the Facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment. To ensure that effluent limitations for this discharge are consistent with the waste load allocations provided in the Total Maximum Daily Load, a concentration based effluent limitation for *E. coli* of 63 colony forming units or most probable number per 100 ml has been included in the Draft Permit. The Draft Permit requires Applicant to comply with requirements of 30 Texas Administrative Code section 309.13(a) and to provide the facilities for the protection of its Facility from a 100-year flood.

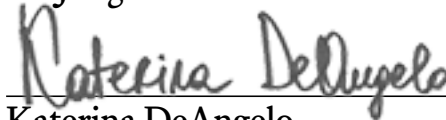
#### IV. ANALYSIS AND RECOMMENDATION

The ALJ found that there is no genuine issue as to any material fact regarding the two issues referred to SOAH because no party presented any evidence to rebut the prima facie presumption that the Draft Permit meets all applicable legal and technical requirements, and, if issued, would be adequately protective of public and environmental health and safety. Therefore, the uncontroverted summary disposition evidence shows that the proposed location for the Facility complies with the 100-year flood plain location standards found in 30 Texas Administrative Code section 309.13(a) and the Draft Permit is adequately protective of water quality.

The ALJ recommends that the Commission adopt the attached proposed order containing Findings of Fact and Conclusions of Law and issue the Draft Permit to Applicant. All requests for findings of fact that are not included in the Proposed Order are denied.

**Signed December 13, 2022.**

ALJ Signature:



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Katerina DeAngelo,  
Presiding Administrative Law Judge



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER  
GRANTING THE APPLICATION BY  
CRYSTAL SPRINGS WATER COMPANY, INC.  
FOR TPDES PERMIT NO. WQ0016005001  
IN MONTGOMERY COUNTY, TEXAS;  
SOAH DOCKET NO. 582-22-04282;  
TCEQ DOCKET NO. 2022-0324-MWD**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Crystal Springs Water Company, Inc. (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016005001 in Montgomery County, Texas. A Proposal for Decision (PFD) was presented by Katerina DeAngelo, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), after granting Applicant's Motion for Summary Disposition on November 29, 2022. After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

### I. FINDINGS OF FACT

#### Application

1. Applicant filed its application (Application) for a new TPDES permit with TCEQ on June 18, 2021.

2. The Application requested authorization to discharge treated domestic wastewater from a proposed plant site (Facility) to be located approximately 0.25 mile north of the intersection of Crockett Martin Road and Farm-to-Market Road 2090 in Montgomery County, Texas.
3. 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.
4. The Executive Director (ED) declared the Application administratively complete on July 26, 2021, and technically complete on September 17, 2021.
5. The ED completed the technical review of the Application, prepared a draft permit (Draft Permit) and made it available for public review and comment.

### **The Draft Permit**

6. The Draft Permit would authorize a discharge of treated domestic wastewater at a daily average flow not to exceed 0.25 million gallons per day (MGD) in the Interim I Phase, 0.50 MGD in the Interim II Phase, and 0.75 MGD in the Final Phase.
7. The Facility will have treatment units including one bar screen, one aeration basin, one final clarifier, one sludge digester, and a chlorine contact chamber in the Interim I Phase. Interim II Phase and Final Phase will be an exact duplicate of the Interim I Phase with flow first going through a flow splitter box. Dichlorination will also be added in the Interim II Phase and Final Phase. The Facility has not been constructed.
8. 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, 15 mg/l total suspended solids, 3 mg/l ammonia-nitrogen, 63 colony forming units or most probable number of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen. 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.

9. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action and numerical and narrative criteria to protect existing uses will be maintained.
10. A Tier 2 antidegradation 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, and that existing uses will be maintained and protected.
11. The end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with the Texas Surface Water Quality Standards for pH when the discharge authorized is from a minor facility.
12. The discharge from the Facility 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.
13. Segment No. 1010 is not currently listed on the State's inventory of impaired and threatened waters list. The Facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment.
14. The Draft Permit requires Applicant to comply with requirements of 30 Texas Administrative Code section 309.13(a) and to provide the facilities for the protection of its Facility from a 100-year flood.

### **Notice and Jurisdiction**

15. The Notice of Receipt of the Application and Intent to Obtain Water Quality Permit was published on July 30, 2021, in *Houston Chronicle dba Conroe Courier* in English and, on August 3, 2021, in *Buena Suerte Newspaper* in Spanish.

16. The Notice of Application and Preliminary Decision was published on November 11, 2021, in *Houston Chronicle dba Conroe Courier* in English and, on November 16, 2021, in *Buena Suerte Newspaper* in Spanish.
17. The comment period for the Application closed on December 16, 2021.
18. TCEQ received timely hearing requests from Protestants based upon issues raised during the public comment period.
19. The ED issued its Response to Comments on January 31, 2022.
20. On June 1, 2022, the Commission considered the hearing request at its open meeting and, on June 6, 2022, issued an Interim Order, directing that the following eight issues be referred to SOAH, denying all issues not referred, and setting the maximum duration of the hearing at 180 days from the date of the preliminary hearing until the date the PFD is issued by SOAH:
  - A) Whether the proposed location for the Facility complies with the 100-year flood plain location standards found in 30 Texas Administrative Code section 309.13(a); and
  - B) Whether the Draft Permit is adequately protective of water quality.
21. On August 5, 2022, notice of the preliminary hearing was published in English in *Houston Chronicle dba Conroe Courier*. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

### **Proceedings at SOAH**

22. On September 12, 2022, a preliminary hearing was convened in this case via videoconference by SOAH ALJ Katerina DeAngelo. Attorney William A. “Cody” Faulk appeared for Applicant; attorney Aubrey Pawelka appeared for the ED; attorney Pranjal Mehta appeared for the Office of Public Interest Counsel (OPIC); and Brent Liedtke and Luke Budd (collectively, Protestants) appeared for themselves.

23. Protestants sought party status at the preliminary hearing, and the ALJ granted their requests. Mr. Liedtke was designated as Protestants' representative.
24. Jurisdiction was noted by the ALJ and the administrative record and ED's exhibits 1-4 were admitted.
25. On October 25, 2022, Applicant timely filed a Motion for Summary Disposition (MSD) and asserted that summary disposition should be granted pursuant to Texas Government Code section 2003.047(i-1)-(i-2) because no party presented any evidence to rebut the prima facie demonstration made by the Applicant. No party filed response to the MSD.
26. A second preliminary hearing was held via videoconference by SOAH ALJ DeAngelo on November 28, 2022. Applicant, ED, and OPIC appeared through their respective representatives; Protestants did not appear. Applicant reurged its MSD and the ALJ took oral arguments of parties.
27. On November 29, 2022, the ALJ issued the Order Granting Motion for Summary Disposition because she found that there was no genuine issue as to any material fact, and that Applicant was entitled to summary disposition as a matter of law. The Order superseded the Order Denying Motion for Summary Disposition, issued on November 4, 2022.
28. The record closed on November 29, 2022.

**Issue 1: Whether the proposed location for the Facility complies with the 100-year flood plain location standards found in 30 Texas Administrative Code section 309.13(a)**

29. No party presented evidence rebutting the prima facie demonstration that the the proposed location for the Facility complies with the 100-year flood plain location standards found in 30 Texas Administrative Code section 309.13(a).

**Issue 2: Whether the Draft Permit is adequately protective of water quality**

30. No party presented evidence rebutting the prima facie demonstration that the the Draft Permit is adequately protective of water quality.

## II. CONCLUSIONS OF LAW

1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.
2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code section 2003.047.
3. Notice was provided in accordance with Texas Water Code sections 5.114 and 26.028; Texas Government Code sections 2001.051 and 2001.052; and 30 Texas Administrative Code sections 39.405 and 39.551.
4. The Application is subject to the requirements in Senate Bill 709, effective September 1, 2015. Tex. Gov't Code § 2003.047(i-1)-(i-3).
5. The Administrative Record established a prima facie case that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(c)(1).
6. Applicant retains the burden of proof on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).
7. No party rebutted the prima facie demonstration by demonstrating that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement that relates to a matter referred by TCEQ. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.117(c).
8. The proposed location for the Facility complies with the 100-year flood plain location standards found in 30 Texas Administrative Code section 309.13(a).
9. The Draft Permit is adequately protective of water quality.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND**



## **CONCLUSIONS OF LAW, THAT:**

1. Application for Texas Pollutant Discharge Elimination System Permit No. WQ0016005001 is granted as set forth in the Draft Permit.
2. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.
6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

## **ISSUED:**

## **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Jon Niermann, Chairman, For the Commission**