

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 2, 2022

TO: Persons on the attached mailing list.

RE: Crystal Springs Water Co., Inc
TPDES Permit No. WQ0016005001

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.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. 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 the R. B. Tullis Branch Library, 21569 U.S. Highway 59, New Caney, 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. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. 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. Your hearing request 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) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

- (3) 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.”
- (4) 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;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address 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.

Additionally, 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 that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

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 **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

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 **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, 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 TCEQ's Alternative Dispute Resolution Program 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 Public Education Program, toll free, at 1-800-687-4040.

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

LG/mo

Enclosure

MAILING LIST
for
Crystal Springs Water Co., Inc
TPDES Permit No. WQ0016005001

FOR THE APPLICANT:

Larry Purcell, President
Crystal Springs Water Co., Inc
P.O. Box 603
Porter, Texas 77365

Shelley Young, P.E., Consulting Engineer
WaterEngineers, Inc.
17230 Huffmeister Road, Suite A
Cypress, Texas 77429

INTERESTED PERSONS:

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

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
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Aubrey Pawelka, Staff Attorney
Texas Commission on Environmental
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Sonia Bhuiya, Technical Staff
Texas Commission on Environmental
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Attorney
Texas Commission on Environmental
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Public Interest Counsel MC-103
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Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TCEQ PERMIT NO. WQ0016005001

APPLICATION BY	§	BEFORE THE
CRYSTAL SPRINGS WATER CO.	§	TEXAS COMMISSION
FOR TPDES PERMIT NO.	§	ON
WQ001600501	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Crystal Springs Water Co., Inc application for a new proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016005001, and on the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. This Response addresses all such timely public comments received, whether or not withdrawn. The Office of the Chief Clerk received timely comment letters from Luke Budd and Brent Liedtke. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program 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

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:

Outfall Number	Latitude	Longitude
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.

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 February 12, 2019; 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.

Access to Rules, Laws, and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- for the Secretary of State website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: www.statutes.capitol.texas.gov/
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select “Rules” then “Download TCEQ Rules”);
- for Federal rules in Title 40 of the Code of Federal Regulations: www2.epa.gov/laws-regulations/regulations; and
- for Federal environmental laws: www2.epa.gov/laws-regulations/laws-and-executive-orders.

Commission records for this application and draft permit are available for viewing and copying at the TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk), until final action is taken. The draft permit, the Statement of Basis/Technical Summary, and the Executive Director’s Preliminary Decision, are available for viewing and copying at R.B. Tullis Branch Library, 21569 U.S. Highway 59, New Caney, Texas.

COMMENTS AND RESPONSES

COMMENT 1

Luke Budd and Brent Liedtke state that the ED's issuance of the draft permit is premature. They believe that many of the statutory and regulatory requirements for issuance of the draft permit have not been met.

RESPONSE 1

The TCEQ is responsible for the protection of water quality with federal regulatory authority over discharges of pollutants to Texas surface water. The TCEQ has a statutory responsibility to protect water quality in the State of Texas and to authorize wastewater discharge TPDES permits under Texas Water Code (TWC) Chapter 26, and regulatory responsibility under 30 TAC Chapters 305, 307 and 309, including specific rules regarding wastewater treatment systems under 30 TAC Chapters 217 and 309.

The proposed draft permit was developed in accordance with the TSWQS to be protective of water quality, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

COMMENT 2

Luke Budd and Brent Liedtke state that the proposed facility cannot be built in a flood zone. They discuss how the site of the proposed facility has historically experienced many major floods and has flooded this year. They claim that highway construction makes it even more likely to flood because

water cannot flow as freely. They believe that flooding at the site area will result in surface contamination.

RESPONSE 2

The TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit. 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. However, to the extent that an issue related to flooding also involves water quality, Crystal Springs Water Co. is required to always comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit, including during flooding conditions.

The TCEQ does not prohibit the location of a wastewater treatment facility in a floodplain if the facility design adheres to TCEQ rules. The proposed White Rock WWTP shall be subject to plans and specifications review prior to construction. Part of this review will include adherence to 30 TAC § 217.35, relating to "One Hundred-Year Flood Plain Requirements." The draft permit requires that the facility design must provide protection from inundation during a 100-year flood event.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

The draft permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation

has occurred. Potential permit violations may be reported to the TCEQ Region 12 or by calling the statewide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<http://www.tceq.state.tx.us/enforcement/complaints/index.html>.

COMMENT 3

Luke Budd and Brent Liedtke believe it will be harmful to the environment if additional effluent is discharged into Caney Creek because the Conroe Independent School District already has a wastewater treatment plant that discharges into Caney Creek.

RESPONSE 3

Section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes, and coastal waters. The water quality 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.

The proposed permit was drafted in accordance with 30 TAC § 307.5 and the TCEQ *Procedures for the Implementation of the Texas Surface Water Quality Standards* (June 2010). The Texas Surface Water Quality Standards provide that surface waters cannot be toxic to aquatic or terrestrial organisms.¹ While the TSWQS and the IPs do not specifically designate criteria for the protection of cattle or livestock, they do designate criteria for the protection of aquatic life that should preclude negative impacts to the health and performance of cattle or wildlife.

¹ 30 TEX. ADMIN. CODE § 307.4.

COMMENT 4

Brent Liedtke is concerned that the proposed facility will block access to his home.

RESPONSE 4

TCEQ does not have the authority to mandate a different discharge location or wastewater treatment plant location if the applicant's proposed location and discharge route comply with the TWC Chapter 26 and 30 TAC Chapter 309, relating to "Domestic Wastewater Effluent Limitations and Plant Siting."

If the Applicant updates the application with a different location or a different discharge route, the Executive Director will reevaluate the discharge route to make sure that the draft permit contains appropriate limits and conditions for the revised discharge location or route. Additionally, new landowners may need to be notified of a change of the facility location or the discharge route.

If the draft permit is issued, it will not grant Crystal Springs the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation, or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is Crystal Spring's responsibility to acquire the necessary property rights to use the site of the planned treatment facility and the discharge route. Additionally, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or

welfare, animal life, vegetation or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

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 Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



Aubrey Pawelka, Staff Attorney
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State Bar No. 24121770

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on January 31, 2022, the "Executive Director's Response to Public Comment" for Permit No. WQ0016005001, was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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