

DOCKET NO. 2023-0569-MWD

APPLICATION BY	§	BEFORE THE
CRYSTAL SPRINGS WATER CO., INC.	§	TEXAS COMMISSION ON
FOR TPDES PERMIT	§	ENVIRONMENTAL QUALITY
NO. WQ0016116001	§	

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., Inc. (Applicant) seeking a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016116001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Bayou City Waterkeeper (BCWK).

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

II. Description of Facility

Crystal Springs Water Co, Inc. applied to TCEQ for a new TPDES Permit No. WQ0016116001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The wastewater treatment facility (WWTF) facility will be located approximately 2,300 feet northeast of the intersection of Copperhead Road and Nicholson Road, in Montgomery County, Texas 77303. The treated effluent will be discharged via pipe to Camp Creek, thence to Caney Creek in Segment No. 1010 of the San Jacinto River Basin.

The Copperhead Cove WWTF will be an activated sludge process plant operated in the conventional mode with nitrification. Treatment units include a bar screen, an anoxic basin, an aeration basin, a final clarifier, a sludge thickener, an aerobic digester, and a chlorine contact chamber. The facility has not been constructed. The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.14 million gallons per day (MGD).

The effluent limitations in both 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 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). 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.

III. Procedural Background

TCEQ received the application on February 25, 2022, and declared it administratively complete on April 25, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Conroe Courier*

on May 2, 2022, and in Spanish in the *Buena Suerte Newspaper* on May 10, 2022. The ED completed the technical review of the application on July 20, 2022. A Notice of Application and Preliminary Decision (NAPD) was published in English in the *Houston Chronicle* on September 9, 2022, and in Spanish in the *Buena Suerte Newspaper* on September 13, 2022. The public comment period ended on October 13, 2022.

This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

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 Hearing Requests

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

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

Eric Allmon on behalf of Bayou City Waterkeeper (BCWK) submitted a timely hearing request and provided the correct contact information. BCWK identified itself as an organization with a member that it believed to have personal justiciable interests affected by the application. However, BCWK did not meet the requirements for associational standing in 30 TAC § 55.201(d) by demonstrating how an individual member of the association is affected based on location.

BCWK identified Brandt Mannchen as a longtime member of BCWK who enjoys recreational activities in the Sam Houston National Forest such as monitoring the health of the forest, hiking, and birding. Although a recreational interest can be enough to establish that an individual is an affected person, in this case BCWK did not demonstrate how Mr. Mannchen is affected in a manner not common to the general public. BCWK made general claims about Mr. Mannchen's recreational interests in the Sam Houston National Forest and did not demonstrate Mr. Mannchen's personal justiciable interests relative to the application. Further, the address listed for Mr. Mannchen is approximately forty-five miles from the proposed facility. Therefore, the hearing request of BCWK should be denied.

The Executive Director recommends the Commission find that Bayou City Waterkeeper is not an affected person.

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

The Executive Director has analyzed the issues in accordance with the regulatory criteria. The issues were raised by Bayou City Waterkeeper and were not withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred. The Executive Director does not recommend granting the request of Bayou City Waterkeeper to SOAH, however, if the Commissioners grant the hearing request, the following issues should be considered in making that determination.

Issue 1: Whether the draft permit will be protective of surface water quality and preserve the designated uses of the discharge route in accordance with the Texas Surface Water Quality Standards. (RTC Response 1)

The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

Issue 2: Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response 3)

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

Issue 3: Whether the draft permit complies with applicable siting requirements in 30 TAC Chapter 309, including compliance with floodplain siting requirements. (RTC Response 4)

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

Issue 4: Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282. (RTC Response 5)

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue 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 actions by the Commission:

Find Bayou City Waterkeeper is not an affected person and deny its hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor
Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services



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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on May 22, 2023, the "Executive Director's Response to Hearing Request" for new TPDES Permit No. WQ0016116001 by Crystal Springs Water Co., Inc 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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MAILING LIST
Crystal Springs Water Co., Inc.
TCEQ Docket No. 2023-0569-MWD; Permit No. WQ0016116001

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REQUESTER(S):

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Austin, Texas 78701

INTERESTED PERSON(S):

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Bayou City Waterkeeper
2010 North Loop West, Suite 103
Houston, Texas 77018

Attachment A

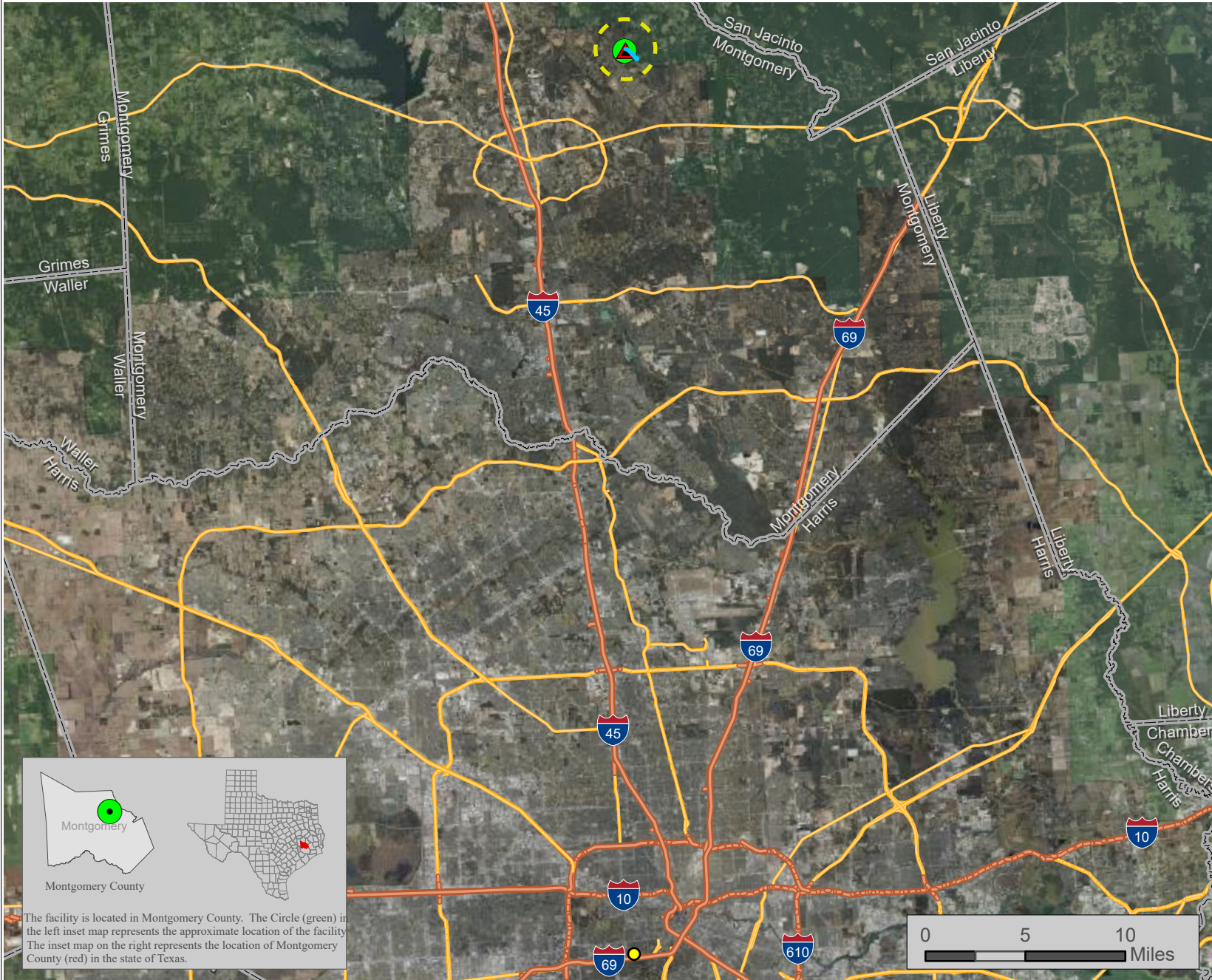
Crystal Springs Water Co., Inc. (WQ0016116001)

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

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GIS Team (Mail Code 197)
P.O. Box 13087
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Date: 3/15/2023
CRF 0085419
Cartographer: cschrade

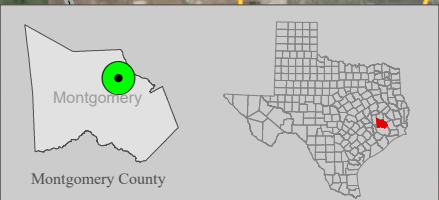


- Requestor
- Facility
- Outfall
- 1 mi Discharge Route
- 1.5 mi Radius
- County Boundary

The requestor, Brandt Mannchen, is located 45.19 mi away from the facility.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Montgomery County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Montgomery County (red) in the state of Texas.

