



# REVISED

## STAFF REPORT

### Planning Commission

#### CASE #CU-120-21

<b>PC Date:</b>	February 2, 2021	<b>Case Planner:</b>	Stacy Wasinger
<b>CC Date:</b>	March 1, 2021		
<b>Location:</b>	9155 Boston Street, Henderson, CO 80640		
<b>Applicant:</b>	Crystal Packaging, Inc	<b>Owner:</b>	Boston Henderson, LLC
<b>Address:</b>	9155 Boston Street Henderson, CO 80640	<b>Address:</b>	1171 Tower Road Schaumburg, IL 60173

#### Case Summary

<b>Request:</b>	Conditional Use Permit for Crystal Packaging, Inc, with <b>associated Development Plan:</b> <ol style="list-style-type: none"><li>1. Existing tank farm exceeding 48,000 gallon above-ground capacity;</li><li>2. Chemical manufacturing/blending;</li><li>3. Storage and processing of hazardous materials;</li><li>4. Petroleum product manufacturing; and</li><li>5. Existing/modified rail spur</li></ol>
<b>Project Description:</b>	<b>The applicant is requesting a Conditional Use Permit and associated Development Plan for an</b> existing 71,000 square foot facility with a bulk tank farm on the west side. The tank farm and previous operations were non-conforming but current construction plans for internal changes and additional external equipment such as a generator necessitate a CUP.
<b>Issues/Concerns:</b>	<ul style="list-style-type: none"><li>• Existing business on site</li><li>• Install improvements, including landscaping</li><li>• Mitigation of tank farm visuals</li><li>• Hazardous materials and appropriate plans/approvals with applicable agencies</li></ul>
<b>Key Approval Criteria:</b>	<ul style="list-style-type: none"><li>• No substantial impact to adjacent properties</li><li>• Mitigation for impacts</li><li>• Conformance to comprehensive plan goals</li><li>• Site is suitable for the use</li><li>• <b>Conditional Use Approval Criteria</b></li><li>• <b>Development Plan Approval Criteria</b></li></ul>
<b>Staff Recommendation:</b>	Approval with Conditions
<b>Current Zone District:</b>	I-3 (Heavy Intensity Industrial District)
<b>Comp Plan Designation:</b>	General Industrial

**Attachments for Review:** *Checked if applicable to case.*

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Vicinity Map       | <input checked="" type="checkbox"/> Applicant's Narrative Summary |
| <input checked="" type="checkbox"/> Development Plan   | <input checked="" type="checkbox"/> Drainage Letter               |
| <input checked="" type="checkbox"/> Staff Presentation | <input checked="" type="checkbox"/> Applicant Presentation Photos |

## Background Information

### Site Information

Site Size:	Approx. 6.94 acres
Current Conditions:	Developed with a 71,000 square foot warehouse and bulk tank farm
Existing Right-of-Way:	Boston Street to the east, Heinz Way and 92nd Avenue to the north
Neighborhood:	Irondale Industrial
Existing Buildings:	71,000 square foot warehouse and bulk tank farm
Buildings to Remain?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Site in Floodplain	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### Surrounding Properties

Existing Land Use		Occupant	Zoning
North	Undeveloped	BNSF Railroad	PUD
South	Industrial	Weyerhaeuser Distribution Company	I-2
East	Industrial	Transportation Specialists Company	I-2
West	Industrial	Birko Corporation	I-3

### Case History

The property was originally developed in Adams County jurisdiction, with the existing building constructed in 1983. In 2007, the property was annexed into the City as part of the Northern Enclave annexations. It was subsequently zoned I-3 Heavy Intensity Industrial due to the existing operations on site. The previous operations included the manufacture and storage of bulk chemicals and lubricants such as oil and deicing solutions. In 2018, Crystal Packaging moved from a facility in Denver to the subject site. Crystal Packaging also purchased the previous business operations, Rocky Mountain Petroleum, and continued those on site as part of the Crystal Packaging business operations. The business currently occupies the building and requests the CUP for their operations. A CUP will also permit repairs and changes to the site that would not be permitted for a non-conforming site under the LDC regulations for such uses. For instance, a tank in the existing tank farm would not be able to be expanded or replaced with a slightly larger tank under legal non-conforming status but could be with conditions under a CUP.

Case	Date	Request	Action
AN-219-07	2007	Annexation	Approval
Z-874-08	March 17, 2008	Annexation zoning from AdCo to Commerce City I-3	Approval

## Applicant's Request

Crystal Packaging, Inc. was established in 1977 as a company that primarily supplied blended chemical products to the airline industry. Over the years, the product line from the company has expanded to include automotive, commercial, and household products. In 2018, the company left its facility in Denver and moved to the subject site at Heinz Way and Boston Street; as part of an Asset Purchase

Agreement, they also purchased the operations of Rocky Mountain Petroleum, the previous operator on site. Products blended and packaged on site include windshield wiper fluid, airplane deicer, synthetic oils, and household cleaners. Current operations also include a focus on organic and environmentally-friendly cleaning products at the subject site, increasing local production of such products. Crystal Packaging includes a stable employment base in the area and moved 30 employees to the site as part of its operations, bringing the total number of employees on the site to 42.

When the applicant moved to the site in 2018, a CUP was required because the exterior improvements proposed would not have been permitted under non-conforming use regulations. Due to the terms of the Asset Purchase Agreement, Crystal Packaging moved to the site because they had to vacate the Denver location. However, the application for a CUP was made, and must be completed before additional improvements receive Certificates of Occupancy. The applicant requests a CUP for their current and continued operations, including five areas that require a CUP in the I-3 zone per the Land Development Code (LDC). These uses include:

1. Existing tank farm exceeding 48,000 gallon above-ground capacity;
2. Chemical manufacturing/blending;
3. Storage and processing of hazardous materials;
4. Petroleum product manufacturing; and
5. Existing/modified rail spur

**Request 1: Existing tank farm exceeding 48,000 gallon above-ground capacity;**

The applicant requests continued operation of the existing (approximately two (2) million gallon capacity in over 62 current tanks in an outdoor tank farm), which requires a CUP because it has over 48,000 gallons of above-ground capacity. Additionally, the applicant requests the ability to have some expanded capacity in the existing tank farm. There is no request to expand the footprint of the tank farm but to include one additional 5,000 gallon tank in the existing farm and to allow for eventual replacement of existing tanks as they age. The replacement tanks would be a bit larger than the existing tanks. The request from the applicant is to allow up to 2.5 million gallon capacity, which is approximately 488,491 gallons greater than the existing 2.01 million gallon capacity. This increased capacity would permit the expansion of operation capacity at the site as aging tanks are replaced on a 1:1 basis. No individual tank will exceed 108,000 gallon capacity, to conform with fire and state code requirements that limit the tank size based on spill containment capacity. The site includes secondary containment capacity that would accommodate this increase tank capacity and an emergency operations plan is in place for any spill incidents.

**Request 2: Chemical manufacturing/blending;**

Crystal Packaging is not engaged in raw chemical material manufacturing at this site. However, their operations do include blending and production of windshield wiper fluid, soaps, detergents, and other sanitation materials. This use would fit within the LDC use defined as *“Insecticides, fungicides, disinfectants, and related industrial and household chemical compounds (blending only)”*, which requires a CUP in the I-3 zone.

### **Request 3: Storage and processing of hazardous materials;**

Per LDC Sec. 21-5239 Hazardous Materials: *“In addition to the performance standards in section 21-5120, those uses that store, manufacture, or utilize quantities of hazardous or toxic materials so as to require an H occupancy under the building and/or fire codes shall be allowed only in the I-3 zone district upon approval of a Conditional Use Permit.”* Although the majority of the materials that Crystal Packaging uses and stores do not meet the threshold of hazardous due to the volume stored, some do meet the threshold and others have the potential to do so. In particular, methanol is stored in quantity so as to be deemed hazardous and requires an H-3 occupancy. Other materials, if packaged differently, would meet that threshold. The CUP would allow for these operations, and all such operations would still require review and conformance with fire and state codes and regulations.

### **Request 4: Petroleum product manufacturing; and**

Raw petroleum products are not manufactured, refined, or stored on site, but such products are used in the blending and manufacture of products on site. The products also include the former Rocky Mountain Petroleum operations such as traditional and synthetic oil products. The requested use is covered under the industry code associated with *“Petroleum and coal products manufacturing”* in the LDC Land Use table.

### **Request 5: Existing/modified rail spur**

Per the LDC, a railroad spur requires a CUP. The existing rail spur would become conforming with this CUP request. The applicant also includes in this request a potential expansion of the rail spur in the area to the southwest of the building. This expansion may be needed in the future due to BNSF operations.

### **Related Site Improvements**

The associated development plan also shows the external improvement proposed with this CUP review. These include some operations modifications such as explosion-proof pumps required by the fire code and the expansion of an outdoor parking/storage area to the north of the building. This area will have screen fencing. Additional fencing is proposed along the northwest property corner to screen the tank farm from view on 92<sup>nd</sup> Avenue/Heinz Way. Additional landscaping is proposed along 92<sup>nd</sup> Avenue to bring landscape improvements up to LDC requirements.

## **Development Review Team Analysis**

The Development Review Team (DRT) reviewed the requested CUP with the applicable approval criteria, LDC requirements, and Comprehensive Plan goals. The DRT recommends approval with conditions, based on the following analysis.

## Comprehensive Plan

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 1	Maintain a Balanced Mix of Land Uses
<b><u>Analysis:</u></b>	The proposed conditional use is in compliance with the Future Land Use plan and is compatible with the industrially developed area surrounding the site. This location is suitable for the use.	
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development	ED 1	Increase economic diversification
<b><u>Analysis:</u></b>	The proposed CUP is an established business moving into Commerce City from Denver. It includes established employment base and adds more jobs in Commerce City.	
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Redevelopment and Reinvestment	RR 1	Increase Infill Development
<b><u>Analysis:</u></b>	The proposed CUP will utilize an existing site that might otherwise be under or unutilized. It will also include investment in site improvements, adding value to the area.	

### Overall Site Operations and Development Plan

The applicant for this case, Crystal Packaging, Inc. blends and packages household chemical materials such as sanitizers and lubricants. These products include automotive windshield wiper fluid, commercial and consumer cleaner products with an emphasis on organic and environmentally-friendly cleaners, and previous Rocky Mountain Petroleum products such as synthetic oils and antifreeze. The operations store the components for these products in quantity in the existing bulk storage tank farm on the site and the processing of the materials occurs in the 71,000 square foot building. The existing rail spur to the south of the site as well as trucks are used for transportation of the products. The previous operator, Rocky Mountain Petroleum, had similar operations and production as the current occupant, Crystal Packaging. The site and similar operations under the previous tenants were considered non-conforming per the Land Development because the site was developed prior to annexation into the City, but due to exterior changes and minor expansion of storage areas required for Crystal Packaging operations, a Conditional Use Permit is required.

The existing site, shown below, is in an industrially zoned and developed area. Users to the east and south are engaged in industrial, large-scale transportation operations. The use to the west, Birko Corporation, is engaged in a similar use to Crystal Packaging. The nearest residential uses are approximately half a mile to the southwest (Irondale mobile home park at 88<sup>th</sup> Ave and Yosemite Street) and a mile to the northeast (Eagle Creek neighborhood). The site is suited to the proposed use physically and will not present a nuisance or hazard to surrounding properties that are industrially developed. No additional buildings or expansion is proposed at this time.

Existing Site Aerial Photo (Source: Nearmap, taken 9/30/20)



Approximately 42 employees work at this facility and the majority of operations, including the import of product from rail and truck, occur during normal business hours (8am to 5 pm). The siting in an industrial area makes this use appropriate for the site. Product coming on to the site via rail is generally offloaded via piping on the south side of the site and moved through the building or to the appropriate outdoor storage tank. Any product or material moving in or out of the site by truck to the tank farm will generally enter on the north side of the site, at the Heinz Way/92<sup>nd</sup> Ave entrance. There is also a truck entrance off of Boston Street that allows access to the building for loading and unloading of trucks. All operations are covered under an emergency response plan that includes spills and other incidents. The applicant works with South Adams County Fire Department and Colorado Department of Public Health and Environment regarding emergency response and any inspections required. No permits are issued, but the site is in compliance with these agencies regulations. The applicant has also demonstrated compliance and cooperation with fire and state code requirements. South Adams County Fire Department has worked with the applicant to bring their operations into compliance. A hazardous materials response plan is in place and the applicant will maintain compliance with state regulations and requirements

Additionally, the applicant is proposing mitigation factors including additional landscaping and a screen fence on the northwest corner of the site. These additional features will help mitigate the visual impact of the above-ground tank farm and any associated traffic. Staff also recommends a condition that any replacement tanks be painted tan in color so as to reduce the visual impact of the tanks in the future. The proposed outdoor storage area will be screened and landscaped in accordance with LDC requirements. No additional traffic impact will be created as the site was already developed and these uses are similar to the previous uses. Required on-site parking is provided to meet LDC requirements and no additional access points are proposed. The additional impervious area associated with the outdoor storage area will meet drainage requirements per the Engineering Standards.

**Request 1: Existing tank farm exceeding 48,000 gallon above-ground capacity;**

Based on the DRT analysis, staff believes this request is justified, including the expanded capacity. The existing tank farm is operational and meets fire and state code requirements. There is also an emergency response plan in place that will address any tank failure and spill without negatively affecting the surrounding environment or properties. The request for increased capacity fits within this response plans and also allows for the modification of the existing tank farm to help the business grow. The replacement of tanks with larger tanks that do not expand the tank farm area lessens the impact of expansion. Additionally, the landscaping and fencing, as well as painting any new tank a neutral beige or tan color will minimize visual impacts more than the existing tanks.

**Requests 2, 3, and 4: Chemical manufacturing/blending; Storage and processing of hazardous materials; and Petroleum product manufacturing**

All three of these requests relate to the operation and production of blended products. The chemical blending process is integral to Crystal Packaging products. The blending is generally done with water or petroleum products. This does not include the manufacture of raw materials but does include bulk storage of the materials and products. The primary material stored in such quantity as to require a hazardous occupancy is menthol, which is flammable. The petroleum products utilized are not refined on site, but are generally used for blending and/or household items such as synthetic oil. None of these operations are inappropriate for the site or the surrounding industrially developed areas. The blending operations occur mostly in the building. The proposed outdoor storage area will be screened as required by the LDC. Additional landscaping also helps improve the site and lessen any impacts from vehicles or transport of materials. All operations are also part of the emergency response plan.

**Request 5: Rail spur**

The rail spur is existing to the south side of the site and it utilized to move products into and out of the site. Improvements to the area have been made to support Crystal Packaging, including an explosion-proof pump to accommodate the methanol, which is flammable. Future expansion plans include two tracks along the mail line, to the west of the building. The existing and proposed rail spur extent does not have much impact on the site or surrounding area. There are other rail spurs in the area for other businesses, as well as the main BNSF line to the south. It will allow the operations to continue and expand as the business grows.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
<input checked="" type="checkbox"/>	The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program or ordinance adopted by the city;	<u><b>Request 1:</b></u> The existing tank farm is located to the east site of the site and is screened from Highway 2 by the building. The surrounding properties are all industrially developed and the proposed use will not adversely impact them. The applicant is also proposing site improvements to meet landscaping standards and reduce visual impacts.



Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
		<p><u>Requests 2-4:</u> The blending and packaging use occurs primarily within the building and during normal working hours. It will not adversely impact the surrounding industrial uses. No additional traffic impact is expected and no public improvements are required at this time.</p> <p><u>Request 5:</u> The existing rail line serves the industrial area. Expansion to the rail spur would not have undue adverse impacts because it will be used and maintained for Crystal Packaging. The existing rail main line is not proposed to be impacted.</p>
☒	Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;	<p><u>Request 1:</u> Additional landscaping and screening will help mitigate the visual impacts of the tank farm and outdoor storage. Staff also recommends a condition that future replacement tanks be painted tan in color to reduce the tank farm visual impact.</p> <p><u>Requests 2-4:</u> Other operations including blending will all take place within the building and will not have outward impacts to surrounding users.</p> <p><u>Request 5:</u> The existing and proposed rail spur expansion are to the south side of the site. These will not have visual impact or alter the existing use of this area.</p>
☒	The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features;	<p><u>Requests 1-5:</u> The already developed site is suitable for this CUP. It is relatively flat and contains site improvements suited to the use, including the existing tank farm. The location in an industrial area with access to rail and major arterial roads is also suitable for this use.</p>
☒	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents. Where any such improvements, facilities, utilities or services are not available or are not adequate to service the proposed use in the proposed location, the applicant shall, as a part of the application and as a condition of approval, be responsible for establishing an ability, a willingness, and a binding commitment to provide such	<p><u>Requests 1-5:</u> All necessary services and improvements are available on the site, including recently improved Heinz Way.</p>



Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
	improvements, facilities, utilities and services in sufficient time to serve the proposed use;	
<input checked="" type="checkbox"/>	The applicant has provided adequate assurances of continuing maintenance;	<p><u>Request 1:</u> In the application materials and narrative, the applicant has shown plans for continued maintenance and improvements, including hazardous response plans. This includes any spills or incidents with the tank farm.</p> <p><u>Requests 2-4:</u> The internal operations and outdoor storage will be maintained, including new landscaping, per the narrative. The applicant follows an emergency response plan for any incidences as well.</p> <p><u>Request 5:</u> The existing rail spur and any expansion will be maintained and coordinated with BNSF.</p>
<input checked="" type="checkbox"/>	There is no evidence to suggest that the use violates any federal, state, or local requirements; and	<p><u>Requests 1-5:</u> The applicant has indicated they will continue to meet all requirements and work with appropriate agencies on this issue.</p>
<input checked="" type="checkbox"/>	There is a community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide and maintain a proper mix of uses both within the city and the immediate area of the proposed use; or	<p><u>Request 1:</u> The tank farm is already existing. Allowing it to continue and be modified permits the upgrade of an existing use that might otherwise have to be constructed on another site. This CUP would allow existing improvements to be utilized.</p> <p><u>Requests 2-4:</u> The area contains similar uses and the product produced is also an aid to community needs at this time given increased demand for cleaners and sanitizers due to COVID-19. There is also an emphasis on organic and environmentally-friendly products that will be produced in Commerce City.</p> <p><u>Request 5:</u> The existing rail spur and access to BNSF rail lines makes this location appropriate for the use and expansion of the rail spur.</p>
<input checked="" type="checkbox"/>	The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the city.	<p><u>All requests:</u> As an entire operation, the proposed use is in conformance with the Future Land Use designation of General Industrial and</p>

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
		<p>enhances economic development and land use goals.</p> <p><u>Request 1:</u> The tank farm is existing and utilizes an appropriate location. Allowing the CUP and capacity increase will promote infill and use of existing resources included in the Comprehensive Plan goals.</p> <p><u>Requests 2-4:</u> The operation will promote employment and the production of organic and environmentally-friendly cleaning products in Commerce City, contributing to the economic development goals of the Comprehensive Plan.</p> <p><u>Request 5:</u> The location is appropriate for the rail spur and is in line with the comprehensive plan and industrial land use for the area.</p>

Criteria Met?	Sec. 21-3212 Development Plans	Rationale
A development plan may be approved if it:		
<input checked="" type="checkbox"/>	Complies with city standards;	The proposed Crystal Packaging operation and site complies with all applicable requirements under city standards and all applicable development and design standards contained within Article VII.
<input checked="" type="checkbox"/>	Is consistent with any previously approved subdivision plat, rezoning concept plan, or other plans or land use approvals;	The proposed use and facility will be consistent with the existing I-3 zoning upon approval of a Conditional Use Permit.
<input checked="" type="checkbox"/>	Provides adequate mitigation for any significant adverse impacts resulting from the use; and	The applicant has provided additional site improvements, including the installation of a landscaping and fencing to mitigate visual impacts from the tank farm and outdoor storage.
<input checked="" type="checkbox"/>	Creates a positive precedent for the future cumulative development of the immediate area.	The proposed site and use would fit with the character of the existing neighborhood, would provide a reuse of an existing site, and would add improvements to the site.

## Development Review Team Recommendation

### Development Plan

Based upon the analysis above, the Development Review Team believes that the request meets the criteria for a Development Plan set forth in the Land Development Code and recommends that the Planning Commission forward the requests to the City Council with a favorable recommendation.

### Conditional Use Permit

Based upon the analysis above, the Development Review Team believes that all five requests meet the criteria for a Conditional Use Permit set forth in the Land Development Code **and contingent on the approval of the associated Development Plan**, recommends that the Planning Commission forward the requests to the City Council with a favorable recommendation, subject to the following condition(s):

### **CONDITIONS:**

- A. The applicant shall install all proposed site improvements associated with the Conditional Use Permit within 12 months of approval of this CUP. These improvements include, but are not limited to, new construction of tanks, fencing, and landscaping as identified in the approved Development Plan dated 11/12/19.
- B. Tanks within the existing fenced tank farm area may be repaired or replaced without revision to this Conditional Use Permit, subject to the following:
  - a. In no case shall the total storage tank capacity on the property exceed 2,500,000 gallons.
  - b. All new or replaced storage tanks shall be colored beige or tan.
- C. Any changes to the Emergency Response Plan shall be provided to the City's Police Department no later than 90 days after a change is made.

## **\*Recommended Motion\***

### ***To recommend approval subject to condition(s):***

I move that the Planning Commission enter a finding that, subject to certain conditions **and contingent on the associated Development Plan**, the five Conditional Use Permit **requests and associated Development Plan** request for the property located at **9155 Boston Street** contained in case **CU-120-21** meet the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve **all five** Conditional Use Permit **requests and associated Development Plan** subject to the following conditions:

- A. The applicant shall install all proposed site improvements associated with the Conditional Use Permit within 12 months of approval of this CUP. These improvements include, but are not limited to, new construction of tanks, fencing, and landscaping as identified in the approved Development Plan dated 11/12/19.
- B. Tanks within the existing fenced tank farm area may be repaired or replaced without revision to this Conditional Use Permit, subject to the following:
  - a. In no case shall the total storage tank capacity on the property exceed 2,500,000 gallons.

- b. All new or replaced storage tanks shall be colored beige or tan.
- C. Any changes to the Emergency Response Plan shall be provided to the City's Police Department no later than 90 days after a change is made.

## Alternative Motions

### *To recommend approval:*

I move that the Planning Commission enter a finding that the five Conditional Use Permit requests **and Development Plan** request for the property located at **9155 Boston Street** contained in case **CU-120-21** meet the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve all five Conditional Use Permit requests and **Development Plan**.

### *To recommend denial:*

I move that the Planning Commission enter a finding that the five Conditional Use Permit requests **and Development Plan** request for the property located at **9155 Boston Street** contained in case **CU-120-21** fails to meet the following criteria of the Land Development Code:

### *List the criteria not met*

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny all five Conditional Use Permit requests **and Development Plan** request.

### *To continue the case:*

I move that the Planning Commission continue the five Conditional Use Permit requests **and Development Plan** request for the property located at 9155 Boston Street contained in case CU-120-21 to a future Planning Commission agenda.