

Jennifer Cox

From: PUBCOMMENT-OCC
Sent: Monday, September 30, 2024 4:38 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016323001
Attachments: DAVESTATES Response to ED Comments.pdf

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From: rfranchek@lockelord.com <rfranchek@lockelord.com>
Sent: Monday, September 30, 2024 11:49 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016323001

REGULATED ENTY NAME HUDSON OAKS WWTP

RN NUMBER: RN111709606

PERMIT NUMBER: WQ0016323001

DOCKET NUMBER:

COUNTY: PARKER

PRINCIPAL NAME: CITY OF HUDSON OAKS

CN NUMBER: CN600645873

NAME: Richard Franchek

EMAIL: rfranchek@lockelord.com

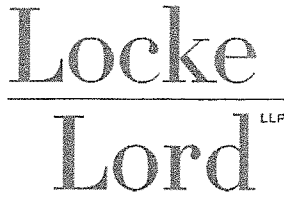
COMPANY: DAVOIL, Inc, d/b/a DAVESTATES

ADDRESS: PO BOX 122269
FORT WORTH TX 76121-2269

PHONE: 8175706500

FAX:

COMMENTS: Please see the attached.



2200 Ross Avenue
Suite 2800
Dallas, TX 75201
Telephone: 214-740-8000
Fax: 214-740-8800
www.lockelord.com

Elizabeth E. Mack
Direct Telephone: 214-740-8598
emack@lockelord.com

September 30, 2024

Via Electronic Comment at www.tceq.texas.gov/agency/decisions/cc/comments.html

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

Re: **Response to Executive Director's Comments and Request for Contested Case Hearing**
City of Hudson Oaks, Texas, Application for a TPDES Permit
Permit No. WQ0016323001 (the "**Permit**")

Dear TCEQ:

This letter is on behalf of DAVOIL, Inc, d/b/a DAVESTATES ("**DAVESTATES**"), regarding the TPDES Permit application referenced above. DAVESTATES is the south adjacent landowner to the City of Hudson Oaks' ("**City**") proposed wastewater treatment facility (the property is identified in the application as Parcel 11). See Attachment A to this letter.

The contact information for DAVESTATES is --

DAVOIL, Inc., d/b/a DAVESTATES
Attn: Carrie Duer
P.O. Box 122269
Fort Worth, Texas 76121-2269
Phone Number: 817-570-6500

DAVESTATES offers the following comments to the Executive Director's ("**ED**") response:

Comment No. 1: The Permit application does not provide for a connection from the treatment plant to the receiving stream.

Regarding our comment concerning the lack of information in the Permit regarding a connection from the treatment plant to the receiving stream, the ED chose not to respond, instead

stating that the Permit does not grant any property rights and further that it is the responsibility of the City to "acquire property rights as may be necessary to use the discharge route."

The ED knows that the City will need to take private property for the proposed treatment plant to discharge wastewater to the receiving stream. In fact, the discharge route, as indicated by the City, is expected to cross the DAVESTATES property, track the DAVESTATES property line, or cross the property of the adjoining landowner. The application is not complete without the City's explanation regarding how it will acquire the land needed for the discharge route. The City appears to be hiding behind the permitting process in hopes of obtaining the Permit and then using it as justification for condemnation. This is backwards: the City must submit a complete application and disclose its intentions so that abutters can understand the true impact from the issuance of the Permit.

The City lacks any ownership interest in the land upon which the effluent is to travel to the receiving stream. The application lacks any discussion as to how such access will be obtained. One of these omissions alone means that the application is incomplete and should be denied. Together, they mean that the application is not just incomplete, it is being used as a shield to the City's true intentions.

Comment No. 2: The Stream is at Risk: The Application is silent regarding whether the receiving stream has the capacity to handle the additional water from the plant or whether downstream flooding will increase as a result of the proposed wastewater discharge plant.

In response to our comment regarding the lack of information on potential flooding to the receiving stream, the ED states the TCEQ does not have jurisdiction over flooding. Apparently, the health of the river and flooding are someone else's problem.

The wastewater treatment plant will be discharging over 1,000,000 gallons of effluent per day. The application is notably silent on whether the stream has the capacity to handle that much water in addition to the normal flows of rainfall that occur. To be sure, the City's silence on this point means that the City knows that the stream cannot withstand the discharge, never mind the discharge from the expected growth and expansion of the plant.

The challenge to the stream also equates to flooding and bank erosion. Government action that results in increased flooding is a taking of private property and is not permissible under either the State or Federal Constitutions without adequate compensation.

The application should contain the receiving stream's physical characteristics with an analysis of the anticipated impact. It is difficult to understand the ED's lack of concern for flooding that would be directly caused by the TCEQ's issuance of the Permit and would result in a State taking.

Due to the lack of analysis regarding the receiving stream's capacity to safely handle the effluent from the proposed plant and the failure to assess increased floodplain elevations, the Commissioners should deny the Permit.

Texas Commission on Environmental Quality
September 30, 2024
Page 3

Based upon the comments noted above, DAVESTATES requests the Commissioners deny issuing the Permit or refer this matter to a contested case hearing.

Sincerely,

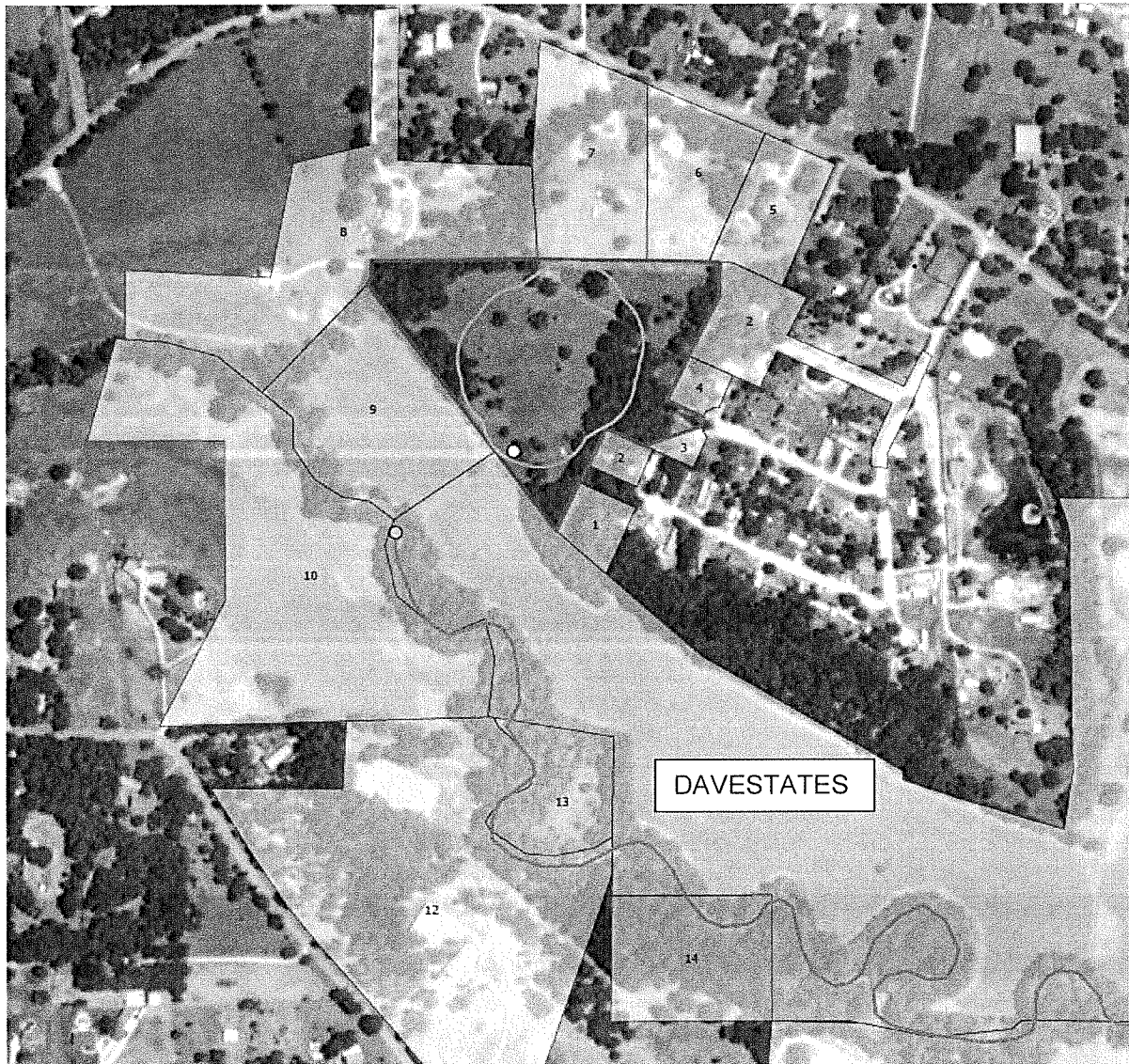
A handwritten signature in black ink, appearing to read "Elizabeth E. Mack". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Mack" being clearly legible. The signature is positioned above the printed name "Elizabeth E. Mack".

Elizabeth E. Mack

Enclosure

cc: Carrie Duer, DAVESTATES

Attachment A: DAVESTATES Property Location



Misty Botello

From: PUBCOMMENT-OCC
Sent: Friday, April 5, 2024 3:20 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016323001
Attachments: Request for Contested Case Hearing.pdf

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Jesús Bárcena
Office of the Chief Clerk
Texas Commission on Environmental Quality
Office Phone: 512-239-3319

How is our customer service? Fill out our online customer satisfaction survey at:
www.tceq.texas.gov/customersurvey

From: rfranchek@lockelord.com <rfranchek@lockelord.com>
Sent: Friday, April 5, 2024 8:49 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016323001

REGULATED ENTY NAME HUDSON OAKS WWTP

RN NUMBER: RN111709606

PERMIT NUMBER: WQ0016323001

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COUNTY: PARKER

PRINCIPAL NAME: CITY OF HUDSON OAKS

CN NUMBER: CN600645873

NAME: MR Richard Franchek

EMAIL: rfranchek@lockelord.com

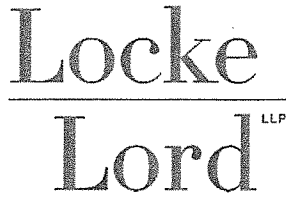
COMPANY: DAVOIL, Inc, d/b/a DAVESTATES

ADDRESS: PO BOX 122269
FORT WORTH TX 76121-2269

PHONE: 8175706500

FAX:

COMMENTS: Please see attached letter requesting a contested case hearing.



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Dallas, TX 75201
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Fax: 214-740-8800
www.lockelord.com

Elizabeth E. Mack
Direct Telephone: 214-740-8598
emack@lockelord.com

April 5, 2024

Via Electronic Comment at www.tceq.texas.gov/goto/comment

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

Re: **Request for Contested Case Hearing**
City of Hudson Oaks, Texas, Application for a TPDES Permit
Permit No. WQ0016323001 (the "Permit")

Dear TCEQ:

This letter is on behalf of DAVOIL, Inc, d/b/a DAVESTATES ("DAVESTATES") regarding the TPDES Permit application referenced above. DAVESTATES is the south adjacent landowner to the City of Hudson Oaks' ("City") proposed wastewater treatment facility (the property is identified in the application as Parcel 11). See Attachment A to this letter.

The contact information for DAVESTATES is --

DAVOIL, Inc., d/b/a DAVESTATES
Attn: Carrie Duer
P.O. Box 122269
Fort Worth, Texas 76121-2269
Phone Number: 817-570-6500

Based upon a review of the Permit application, DAVESTATES offers the following comments:

Comment No. 1: The Permit application does not provide for a connection from the treatment plant to the receiving stream.

The City's application does not include any information on how the effluent discharged from the plant will be transported to the receiving stream other than a vague reference to a

pipeline. The City does not appear to own any interest in the land under or upon which the pipeline is to be placed. TCEQ guidance for domestic wastewater treatment facilities¹ states as follows:

"The issuance of a permit does not grant a permittee the right to use the specific discharge route or to use private or public property for conveyance of wastewater along the discharge route described above. The permittee must acquire all property rights as may be necessary to use the discharge route."

The proposed discharge route from the plant to the receiving stream is owned by DAVESTATES, and the City does not have permission to use DAVESTATES's property to transport wastewater. The application is misleading by remaining silent on the apparent need for private property to reach the receiving stream. It also means the application is incomplete. TCEQ should not issue a permit when a meaningful operational portion of the facility (effluent route) is not addressed.

Further, if the plan is to condemn private property, an affected landowner, such as DAVESTATES, has no prior notice on how much land will be needed because the application is completely silent on this subject. The City has never approached DAVESTATES on obtaining a right of access across the land. The City may be hiding behind the permitting process in hopes of obtaining the permit and then using the permit to seek condemnation. This is backwards and not acceptable.

The lack of any ownership interest in land upon which the effluent is to travel to the receiving stream and the lack of any discussion in the application on how such access will be obtained should result in TCEQ denying the Permit application.

Comment No. 2: No analysis was performed to assess whether the receiving stream has the capacity to handle the additional water from the plant or whether downstream flooding will increase as a result of the proposed wastewater discharge plant.

The stream physical characteristics contained in Attachment H of the Permit application do not take into account how much of a water rise will occur when the treatment plant is discharging over one million gallons per day of effluent. This information is important for landowners, such as DAVESTATES, whose property borders the receiving stream. Questions that need to be answered are whether the bank height (not included in the application) is sufficient to contain the additional water to be added by the treatment plant, whether the increased amount of water will cause erosion of the banks resulting in greater than expected property loss, and how much higher will the flood elevation be over the existing floodplain elevations due to the addition of wastewater being added during a flood event.

Increasing the flood elevation requires prior approval from the Federal Emergency Management Agency ("FEMA"). A suitable engineer is needed to assess if flood elevations will be affected requiring FEMA approval. In addition, taking private property for the storage of flood

¹ See "Instructions for Completing the Domestic Wastewater Permit Application," TCEQ Form TCEQ-10053-Instructions, dated April 2024, p. 31.

Texas Commission on Environmental Quality
April 5, 2024
Page 3

water is not permissible under the State or Federal Constitutions without adequate compensation. Neither the City nor the TCEQ have made any finding on the potential for increased flooding.

Due to the lack of analysis regarding the receiving stream's capacity to safely handle the effluent from the plant and the failure to assess whether floodplain elevations will increase, TCEQ should deny the Permit.

Comment No. 3: The Permit application is not sufficient for the TCEQ to issue a TPDES permit.

The application does not provide enough information for an engineering assessment of impacts to DAVESTATES. This deficiency and the deficiencies noted above indicate that the Permit application overall is inadequate and is not a suitable basis for TCEQ to make a decision on issuing the Permit.

Request for Contested Case Hearing

Based upon the comments noted above, DAVESTATES requests a contested case hearing.

Sincerely,



Elizabeth E. Mack

Enclosure

cc: Carrie Duer, DAVESTATES

Attachment A: DAVESTATES Property Location

