

Brooke T. Paup, *Chairwoman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 31, 2025

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

RE: **IN THE MATTER OF THE APPLICATION BY THE CITY OF HUDSON
OAKS FOR TPDES PERMIT NO. WQ0016323001
TCEQ DOCKET NO. 2025-0083-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0083-MWD

**APPLICATION BY CITY OF
HUDSON OAKS FOR TPDES
PERMIT NO. WQ0016323001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUEST FOR HEARING**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to request for hearing in the above-referenced matter.

I. Introduction

A. Summary of Position

Before the Commission is an application by City of Hudson Oaks (Applicant or City) for a new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016323001 which would authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,190,000 gallons per day. The Commission received timely comments and hearing requests from DAVOIL, Inc., d/b/a DAVESTATES (DAVESTATES). For the reasons detailed below, OPIC recommends the Commission grant the hearing requests of DAVESTATES. OPIC further recommends the Commission refer the issues specified in Section III.G for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

B. Description of Application and Facility

As previously stated, the Applicant submitted an application to the TCEQ for a new TPDES Permit No. WQ0016323001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,190,000 gallons per day. The Applicant proposes to operate Hudson Oaks Wastewater Treatment Plant (facility), which will serve the City of Hudson Oaks. The facility would be an activated sludge process plant operated in the single-stage nitrification mode. The proposed facility would be located approximately 1,150 feet west of the intersection of Clearview Court and Trinity River Drive, in Parker County 76087. The treated effluent would be discharged via pipe to South Fork Trinity River, then to Clear Fork Trinity River below Lake Weatherford in Segment No. 0831 of the Trinity River Basin.

C. Procedural Background

The TCEQ received the application on March 31, 2023, and declared it administratively complete on June 5, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Parker County Today News Blast* on June 23, 2023, and in Spanish in the *Tex Mex News* on June 15, 2023. The Notice of Application and Preliminary Decision was published in the *Parker County Today News Blast* on March 6, 2024, and in Spanish in the *Tex Mex News* on February 22, 2024. The public comment period ended on April 5, 2024. The Chief Clerk mailed the Executive Director's decision and Response to Comments on August 29, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was September 30, 2024.

II. Applicable Law

The application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under Title 30 Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) 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;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor 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 ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the RTC, and that are relevant and material to the Commission's decision on the application. Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

III. Analysis of Hearing Request

A. Whether the requestor is an affected person

The Commission received timely comments and hearing requests from DAVESTATES. DAVESTATES stated that the proposed discharge route from the wastewater treatment plant to the receiving stream crosses through its property. DAVESTATES also stated that the City does not have permission to use its property for transporting wastewater. Additionally, DAVESTATES raised concerns regarding the absence of any analysis to evaluate whether the receiving stream has sufficient capacity to handle the increased flow from the plant. It

also expressed concerns that the proposed discharge could lead to downstream flooding.

The ED's map indicates that DAVESTATES' property is located adjacent to the facility boundary, with the proposed discharge route running through DAVESTATES' property. DAVESTATES' concern regarding the suitability of the discharge route is an interest protected by the law under which the application will be considered. *See* 30 TAC § 55.203(c)(1). Given the proximity of DAVESTATES' property to Applicant's facility, outfall, and the discharge route, OPIC finds that a reasonable relationship exists between the interests claimed and the activity regulated. *See* 30 TAC § 55.203(c)(3). Finally, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4), (5). Therefore, OPIC finds that DAVESTATES qualifies as an affected person in accordance with 30 TAC § 55.203.

B. Which issues raised in the hearing request are disputed

DAVESTATES raised the following disputed issues:

1. Whether the proposed discharge route is properly characterized in the application, and, as an operational feature of the facility, will function properly.
2. Whether the application is complete and accurate.
3. Whether the operations granted under the draft permit would cause flooding.

C. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). The issues listed above are issues of fact.

D. Whether the issues were raised during the public comment period

All of the issues were raised by DAVESTATES during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

F. Whether the issues are relevant and material to the decision on the application

To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny a permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law relating to the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Suitability of the Discharge Route

DAVESTATES is concerned whether the receiving stream has the capacity to handle the additional water from the facility. This concern appears to be based on the suitability and functioning of the discharge route. Proper functioning of a

discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state. Further, the Texas Surface Water Quality Standards (Standards) in 30 TAC Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state.” 30 TAC § 307.1. An inaccurate or inadequate representation of the effluent route could prevent ED staff from conducting a complete and accurate analysis. Therefore, Issue no. 1 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Complete and Accurate Application

DAVESTATES stated that the application is incomplete and unsuitable for TCEQ to base its decision on issuing the permit. The Commission’s Chapter 281 and Chapter 305 rules require applicants for TPDES permits to certify the accuracy of the information provided to TCEQ and to supplement or correct the application if an error is later discovered. Therefore, Issue no. 2 is relevant and material.

Flooding

DAVESTATES is concerned whether the downstream flooding will increase as a result of the proposed wastewater discharge. TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit.

Therefore, Issue No. 3 is not relevant and material.

G. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues:

1. Whether the proposed discharge route is properly characterized in the application, and, as an operational feature of the facility, will function properly.
2. Whether the application is complete and accurate.

H. Maximum expected duration for the contested case hearing

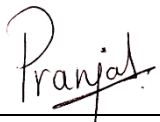
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

V. Conclusion

For the reasons discussed above, OPIC recommends the Commission grant DAVESTATES' hearing request and refer the issues specified in Section III.G for a contested case hearing at SOAH with a maximum duration of 180 days.


Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Pranjal M. Mehta

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TCEQ DOCKET NO. 2025-0083-MWD**

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