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February 13, 2025

Laurie Gharis
Chief Clerk
MC 105
Texas Commission on Environmental Quality
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:

Please find enclosed for filing DAVOIL, INC. d/b/a DAVESTATES' Reply in support of its Request for Contested Case Hearing in the above-referenced matter.

Sincerely,



Elizabeth E. Mack

cc: Mailing List

Carrie Duer, DAVESTATES

DOCKET NO. 2025-0083-MWD

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

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DAVOIL, INC. D/B/A DAVESTATES’S REPLY IN SUPPORT OF
REQUEST FOR CONTESTED CASE HEARING**

To the Members of the Texas Commission on Environmental Quality:

DAVOIL, Inc. d/b/a DAVESTATES (“DAVESTATES”) files this reply in support of its request for a contested case hearing in the above-referenced matter:

I. SUMMARY OF POSITION

DAVESTATES is the south adjacent landowner to the City of Hudson Oaks’s (“City”) proposed wastewater treatment plant (“WWTP”). Effluent from the proposed WWTP must pass directly through DAVESTATES’s property on its way to be discharged to the South Fork Trinity River.¹ DAVESTATES is filing this reply to explain why the discharge route issue is not the only issue that should be referred and to further expand on the ED and OPIC’s recommendation to refer the discharge route issue to the State Office of Administrative Hearings (“SOAH”).

DAVESTATES does not agree with the ED and OPIC’s failure to recommend referral of the stream capacity issue to SOAH. Stream capacity is directly relevant to accurately determining whether the City’s permit application satisfies the Texas Surface Water Quality Standards – which is squarely within TCEQ’s jurisdiction. (*See* 30 TEX. ADMIN. CODE § 307.1). DAVESTATES respectfully requests that the Commission also refer the stream capacity issue to SOAH.

Regarding the discharge route, in addition to the arguments in the ED’s and OPIC’s responses, the referral is important because the City does not have the need for the WWTP. Specifically, the City publicly stated it found a “cheaper and more financially feasible alternative” to the proposed WWTP at issue here by partnering with the City of Willow Park to construct a new

¹ As stated in our Request for Contested Case Hearing, DAVESTATES is an affected person with a personal justiciable interest because it owns property in direct proximity to the City’s proposed WWTP, discharge route, and outfall. The ED and OPIC agree. (ED Resp. at 4-5; OPIC Resp. at 5-6).

wastewater treatment facility. (See Hudson Oaks, [FY 2024-2025 Proposed Budget](#) at 4 (Sept. 26, 2024)). As a result, the City likely has no intention of starting construction of the proposed WWTP at issue here in the next five years, as required by TCEQ's *Instructions for Completing the Domestic Wastewater Permit Application*. (See TCEQ-10053ins at 42-44). An Administrative Hearing will sort out whether the application is complete, and indeed whether the application should be withdrawn in its entirety.

Additionally, the application is silent on the need for private property. The amount of private property required, and the location of discharge points are fundamental design, construction, and operational features that must be considered by TCEQ to ensure the proposed WWTP site minimizes possible contamination of the water in the state. (See 30 TEX. ADMIN. CODE § 309.12). DAVESTATES respectfully requests that the Commission also refer the property rights issue to SOAH.

II. REQUEST FOR HEARING

1. **The Stream Capacity Issue Should Be Referred to SOAH Because it is Directly Relevant to Texas Surface Water Quality Standards.**

The ED does not recommend referring this issue to SOAH because, according to the ED, the TCEQ does not have jurisdiction to regulate flooding. (See ED Resp. at 5). The ED mischaracterizes the focal point of this issue. DAVESTATES is concerned with the lack of analysis regarding the receiving stream's capacity to safely handle the effluent from the proposed WWTP. If the stream lacks capacity, DAVESTATES has a justiciable interest with any flood- or erosion-related impacts to their property. TCEQ has jurisdiction over stream capacity as it relates to accurately determining whether the City's permit application satisfies the Texas Surface Water Quality Standards. (See 30 TEX. ADMIN. CODE § 307.1).

The proposed WWTP will discharge over 1,000,000 gallons of effluent per day to the South Fork Trinity River. The permit application did not adequately address whether the receiving stream has capacity to handle this significant quantity of additional flow. By failing to adequately consider whether the receiving water has sufficient capacity, the stream physical characteristics in the permit application cannot accurately take into account how much water levels will rise with the additional

flow or the potential impacts to the health of the receiving stream (e.g., erosion) – both in normal flow conditions and during extreme flood events. The lack of detailed information regarding the location of the discharge point and effluent route may impede TCEQ’s analysis regarding whether the receiving stream has capacity to handle additional water from the WWTP while maintaining Texas Surface Water Quality Standards. (See 30 TEX. ADMIN. CODE § 307.1).

As a result, the permit application does not provide enough information regarding stream capacity to conduct an adequate engineering assessment of the impacts to DAVESTATES’s property. Accordingly, the stream capacity issue should be referred to the contested case hearing.

2. All Agree that the Discharge Route Issue Needs to be Referred, and Additionally, the City Does Not Even Need This Permit.

The City’s failure to articulate a discharge route likely is because it has made other arrangements for wastewater and does not intend to begin construction within the permit term (if ever). DAVESTATES agrees with the ED and OPIC that the discharge route issue needs to be referred to SOAH for the reasons stated in our Request for Contested Case Hearing, for the reasons expressed by the ED and OPIC, and for the additional reason that the City apparently has no interest in pursuing a concrete discharge route because it has no need for this permit.

The City has stated publicly that it has other plans for wastewater treatment. As a result, it appears that the City has no need for this permit. In June 2024, the City signed an interlocal agreement whereby the City of Willow Park will provide wastewater treatment service to the City. (See [Willow Park City Council Agenda Item Briefing Sheet](#), June 25, 2024). In return, the City will pay 20% of the construction costs for the new Willow Park Wastewater Treatment Plant, as well as 20% of operational costs over the next 20 years. As it relates to future needs, the City reserved the right to purchase additional treatment capacity should the plant be expanded.

The City even concluded that the arrangement with Willow Park is cheaper and financially more feasible. In the City’s own words:

About 18 months ago, the city authorized the purchase of the Palo Duro Water System on the south side of the city off of E Bankhead Drive. The initial plans for this purchase of this water system were to develop the site into the future location of Hudson Oaks’ wastewater treatment facility. *Fortunately, the city has found a*

cheaper and more financially feasible alternative by partnering with the City of Willow Park in being joint owners of the wastewater treatment facility that they are currently in the process of constructing.

(See Hudson Oaks, [FY 2024-2025 Proposed Budget](#) at 4 (Sept. 26, 2024)).

TCEQ is charged with the responsibility for determining the *need* for a wastewater discharge permit. (See TCEQ-10053ins at 44). If construction of facilities for specific phases will not be started within a five-year time period from the date of the permit application, then the phase should not be included in the permit application. (See *id.* at 42). As a result, in addition to not providing a discharge route, the permit does not appear necessary at all. Proceeding on this permit application is a waste of valuable public and private resources.

The City should withdraw its application. In any event, the City's incomplete application should be referred to SOAH.

3. The Property Rights Issue Should Be Referred to SOAH Because The City Did Not Identify the Amount of Private Property it Intends to Condemn from DAVESTATES.

As noted above, the proposed discharge route from the WWTP to the receiving stream is owned by DAVESTATES. The City does not have permission to use DAVESTATES's property to transport effluent and it certainly does not have permission to flood DAVESTATES's property. The application is silent on the need for private property. The amount of private property required, and the location of discharge points are fundamental design, construction, and operational features that must be considered by TCEQ to ensure the proposed WWTP site minimizes possible contamination of the water in the state. (See 30 TEX. ADMIN. CODE § 309.12).

DAVESTATES has no prior notice from the City how much land will be needed for the proposed WWTP because the application is completely silent on the subject. If the City plans to condemn DAVESTATES's property, it stands to reason that the permit application is incomplete because it has not provided the requisite information to the affected landowners. TCEQ's permitting process is an essential government program that should not be abused by the City as justification for condemnation.

III. CONCLUSION

Based on the comments noted above, DAVESTATES requests the Commissioners' deny issuing the Permit or refer this matter to a contested case hearing on the three issues described herein.

Respectfully submitted,



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*Attorneys for DAVOIL, INC. d/b/a
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served on 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.



ELIZABETH E. MACK

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TCEQ DOCKET NO. 2025-0083-MWD**

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