

**SOAH DOCKET NO. 582-23-15497
TCEQ DOCKET NO. 2022-1700-MWD**

APPLICATION OF PHAU-LOCKHART 450, LLC FOR A NEW TPDES PERMIT NO. WQ0016107001	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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PHAU-LOCKHART 450, LLC’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

PHAU-Lockhart 450, LLC (“PHAU” or “Applicant”) appreciates the analysis in the Proposal for Decision on Summary Disposition (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) Administrative Law Judge (“ALJ”) on August 21, 2023. PHAU supports the overall conclusion recommending that the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) adopt the proposed order and issue the Draft Permit¹ to Applicant. For the purposes of accuracy, completeness, and clarity, PHAU respectfully requests the following exceptions and corrections to the findings of fact and conclusions of law, as well as the proposed order.²

I. EXCEPTIONS AND CORRECTIONS

1. **Finding of Fact 9 (Proposed Order at 3):** This finding describes the effluent limitations contained in the draft permit prepared by the Executive Director in June 2022 and made publicly available for review and comment. In the Response to Public Comment issued on September 23, 2022, Executive Director staff added a limit of 0.5 mg/l of total phosphorus

¹ Applicant’s Exhibit C (the “Administrative Record”), Tab C at 0047–83.

² Applicant also respectfully notes that Section C, Paragraph 2 (PFD at 8) contains a minor typographical error in the identification of the relevant segment: Segment No. ~~4040~~ 1810 is not currently listed on the State’s inventory of impaired and threatened waters.

to the draft permit.³ Applicant subsequently represented an improved design of its plant to meet more stringent effluent limits, as requested by the Guadalupe-Blanco River Authority in its comments. Executive Director staff again revised the draft permit with these more stringent limits on October 6, 2022.⁴ To accurately describe the effluent limits in the October 6, 2022 draft permit, PHAU recommends editing Finding of Fact 9 as follows:

The effluent limitations in all phases of the Draft Permit, based on a 30-day average, are ~~to~~ 5 mg/l Carbonaceous Biochemical Oxygen Demand (CBOD₅), ~~to~~ 5 mg/l Total Suspended Solids (TSS), ~~to~~ 2 mg/l Ammonia Nitrogen (NH₃-N), 0.5 mg/l Total Phosphorus (TP), 126 colony forming units or most probable number of E. coli per 100 ml; and the effluent must contain a minimum Dissolved Oxygen (DO) level of 4.0 mg/l, which must be monitored once per week by grab sample.

2. **Finding of Fact 25 (Proposed Order at 5):** This finding contains an omission and incorrectly lists a single date for the publication of the notice of preliminary hearing, which was issued by TCEQ on April 19, 2023, and published in the *Lockhart Post Register* by PHAU on April 27, 2023.⁵ PHAU recommends editing Finding of Fact 25 as follows:

On April 19, 2023, notice of the preliminary hearing was issued by the TCEQ. On April 27, 2023, Applicant published said notice in the Lockhart Post Register in English. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

3. **Final Order 2 (Proposed Order at 7):** To provide clarity and align with the more stringent effluent limits in the October 6, 2022 draft permit issued after the Response to Public Comment, PHAU recommends editing Final Order 2 as follows:

The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117. If there is any conflict between the Commission's Order and the ED's Response to Public Comment, the Commission's Order prevails.

³ Administrative Record, Tab C at 0008.

⁴ Administrative Record, Tab C at 0047-50.

⁵ Administrative Record, Tab B at 00002.

II. CONCLUSION

PHAU respectfully requests that the Commission grant these exceptions and issue the findings of fact, conclusions of law and proposed order as excepted.

Respectfully submitted,

By: 

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***ATTORNEYS FOR APPLICANT
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PHAU-Lockhart 450, LLC's Exceptions to the Proposal for Decision has been served on the following counsel/persons by electronic mail on this 11th day of September, 2023.

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