

**TCEQ AIR QUALITY PERMIT NUMBERS 121051 & PSDTX1418  
TCEQ DOCKET NO. 2015-0566-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>NAVASOTA NORTH COUNTRY</b>	<b>§</b>	
<b>PEAKERS OPERATING</b>	<b>§</b>	
<b>COMPANY I, L.L.C.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>VAN ALSTYNE ENERGY CENTER</b>	<b>§</b>	
<b>VAN ALSTYNE, GRAYSON</b>	<b>§</b>	
<b>COUNTY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
	<b>§</b>	

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) § 382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code (TWC) § 5.556.<sup>1</sup>This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. In addition, a current compliance history report, technical review summary, modeling audit memorandum, and draft permit prepared by the ED's staff have been filed with the TCEQ's Office of Chief Clerk for the commission's consideration. Finally, the ED's Response to Public Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

**BACKGROUND**

Description of Facility

Navasota North Country Peakers Operating Company I, L.L.C. (Navasota) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA), § 382.0518. This will authorize the construction of a new plant that contains facilities that may emit air contaminants.

This permit will authorize the applicant to construct the Van Alstyne Energy Center. The plant is located as follows: from US 75 in Van Alstyne turn east onto Van Alstyne Pkwy and go 0.6 miles then turn south onto Waco St and go 0.1 miles then turn east onto Jefferson St and go 0.2 miles then turn south onto Sherman Rd and go 0.4 miles then turn east on Ballard Rd and go 1.6 miles, Van Alstyne, Grayson County. Contaminants authorized under this permit include volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), and particulate matter (PM), including particulate matter with diameters of 10 micrometers or less (PM<sub>10</sub>) and

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.capitol.state.tx.us/statutes/statutes.html](http://www.capitol.state.tx.us/statutes/statutes.html). Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml), or follow the "Rules, Policy & Legislation" link on the TCEQ website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

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2.5 micrometers or less (PM<sub>2.5</sub>), sulfur dioxide (SO<sub>2</sub>), sulfuric acid (H<sub>2</sub>SO<sub>4</sub>), hazardous air pollutants, and lead (Pb).

Before work is begun on the modification of an existing facility that may emit air contaminants, the person planning the modification must obtain a permit amendment from the commission. This permit application is for a new Air Quality Permit Numbers 121051 and PSDTX1418.

The permit application was received on June 23, 2014, and declared administratively complete on July 1, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on July 11, 2014, in the *Van Alstyne Leader* and *Herald Democrat*. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on December 26, 2014, in English in the *Van Alstyne Leader* and *Herald Democrat*. A public meeting was held on January 13, 2015 in Sherman. The notice of public meeting was published in English on December 26, 2014 in the *Van Alstyne Leader* and *Herald Democrat*. The public comment period ended on January 26, 2015. The ED's RTC was filed on April 13, 2015.

The time for requests for reconsideration and hearing requests ended on May 13, 2015. The TCEQ received timely hearing requests during the public comment period that were not withdrawn from Pamela Brody, Christy Bryant, Jeffrey A. Farley, James Firtos, Emily and David Franklin, Donna Franus, Theresa Green, Kelly & Frank Herndon, Virginia Kennedy, Brent Kennedy, George & Mollie Kennemer, Chrissy Marie Koth, Bobby McKee, Martha McKee, Delanna Mitchell, Michael R. Mitchell, Christopher Scott Moreno, Charles Netherlain, Brittany Nettles, Rebecca A. Rodriguez, Velynda Short, Brad Spence, Tracy Spence, Amanda Stromquist, and Lori Jean Williams. The TCEQ also received a timely hearing request from Rita Beving on behalf of the Dallas Sierra Club.

## **II. Applicable Law for Hearing Requests**

The commission must assess the timeliness and form of the hearing requests, as discussed in Section I above. The form requirements are set forth in 30 TAC § 55.201(d):

(d) 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. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester 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;

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- (4) list all relevant and material disputed issues of fact that were raised 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 requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by TWC § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, 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. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

In determining whether a person is affected, 30 TAC § 55.203(c) requires all factors be considered, including, but not limited to, the following:

- (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; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition to the requirements noted above regarding affected person status, in accordance with 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.<sup>2</sup>

If the commission determines a hearing request is timely and fulfills the requirements for proper form and the hearing requester is an affected person, the commission must apply a

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<sup>2</sup> 30 TAC § 55.205(a)

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three-part test to the issues raised in the request to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.115(c) is as follows:

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period; and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or facilities.<sup>3</sup> Thus, the location and operation of the proposed facility requires authorization under the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.<sup>4</sup> Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to air pollution.<sup>5</sup> The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.<sup>6</sup> The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

### **III. Analysis of Hearing Requests**

#### **A. Were the requests for a contested case hearing in this matter timely and in proper form?**

The following persons submitted timely hearing requests that were not withdrawn: Pamela Broddie, Christy Bryant, Jeffrey A. Farley, James Firtos, Emily and David Franklin, Donna Franus, Theresa Green, Kelly & Frank Herndon, Virginia Kennedy, Brent Kennedy, George & Mollie Kennemer, Chrissy Marie Koth, Bobby McKee, Martha McKee, Delanna Mitchell, Michael R. Mitchell, Christopher Scott Moreno, Charles Netherlain, Brittany Nettles, Rebecca A. Rodriguez, Velynda Short, Brad Spence, Tracy Spence, Amanda Stromquist, and Lori Jean Williams. The TCEQ also received a timely hearing request from Rita Beving on behalf of the Dallas Sierra Club.

The following persons provided an address that is at or within one mile from the proposed facility (see attached map): Pamela Boddie, Virginia Kennedy, Brent Kennedy, Chrissy Marie Koth, Bobby McKee, Martha McKee, Delanna Mitchell, Michael R. Mitchell, Christopher Scott Moreno, Brittany Nettles, Rebecca A. Rodriguez, Brad Spence, and Tracy Spence. All of the remaining requestors provided addresses that were greater than one mile from the proposed facility (see attached map). These hearing requests were submitted during the public comment period or during the period for requesting a contested case hearing after the filing of the ED's

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<sup>3</sup> TEXAS HEALTH & SAFETY CODE § 382.0518

<sup>4</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

<sup>5</sup> TEXAS HEALTH & SAFETY CODE § 382.085

<sup>6</sup> TEXAS HEALTH & SAFETY CODE § 382.0513

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RTC. Furthermore, the ED has determined these hearing requests substantially comply with all of the requirements for form in 30 TAC § 55.201(d).

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk attached to the RTC states that requesters should, to the extent possible, specify any of the ED's responses in the RTC that the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.<sup>7</sup> In the absence of a response from any of the hearing requesters or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has included all of the issues raised by hearing requesters and commenters regarding this application as listed below.

**B. Are those who requested a contested case hearing in this matter affected persons?**

The threshold test of affected person status, as defined in 30 TAC § 55.203, is whether the requestor has a personal justiciable interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

All of the hearing requesters who submitted requests on this application, with the exception of Jeffrey Farley and Christy Bryant, listed at least one personal justiciable interest affected by the application, related to their own or their family's health, as well as other varied concerns relating to possible effects of emissions on pets, livestock, crops, property, enjoyment of property, effects on businesses, property values, possible other pollution effects, and welfare issues. Jeffrey Farley, requested a hearing, but failed to articulate any specific reason why he should be granted a hearing. Christy Bryant stated only that she is affected because she lives close to the proposed facility and would be affected by the air emissions, but failed to state how or why she would be affected by such emissions.

The commission must consider whether the interest claimed by the protestants are protected by the law under which the application will be considered. As discussed below, protestants did raise issues that satisfy this requirement. The commission must consider whether a reasonable relationship exists between the interest claimed and the activity regulated. The activity the commission regulates is the authorized emissions into the air of contaminants by a person who owns or operates a facility or facilities. Those persons who own or operate a facility or facilities are prohibited from emitting air contaminants or performing any activities that contravene the TCAA or any other commission rule or order, or that causes or contributes to air pollution.

There were interests claimed by Pamela Broddie, James Firtos, Emily and David Franklin, Donna Franus, Theresa Green, Kelly & Frank Herndon, Virginia Kennedy, Brent Kennedy, George & Mollie Kennemer, Chrissy Marie Koth, Bobby McKee, Martha McKee, Delanna Mitchell, Michael R. Mitchell, Christopher Scott Moreno, Charles Netherlain, Brittany Nettles, Rebecca A. Rodriguez, Velynda Short, Brad Spence, Tracy Spence, Amanda Stromquist, and Lori Jean Williams that are within the scope of an air quality authorization because they focus on the potential adverse effects of potential air contaminants from the facility. Therefore, the ED finds

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<sup>7</sup> See 30 TAC § 55.201(d)(4).

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that a reasonable relationship exists between the interests claimed and the activity the commission regulates. The issues raised by the protestants are as follows:

1. Impact the proposed facilities will have on the health and enjoyment of requestors' property; requestors indicated they have illnesses or family members with illnesses such as asthma or reduced lung function and heart conditions among other ailments which will be exacerbated by the air pollution from the plant;
2. Impact of the emissions on livestock and plants like pecan trees; potential for corrosive effects of emissions, including the potential for rusting of fences, barns, and farm equipment;
3. Effects of the various criteria pollutants (CO, NO<sub>x</sub>, PM, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and Pb) on people and property; health effects from the emissions of Pb; the impacts of PM, VOCs, CO, SO<sub>2</sub> and NO<sub>x</sub> including long-term health effects from exposure to these contaminants;
4. Cumulative effects of this and other sources in the area;
5. Impact of construction equipment emissions;
6. Existing ambient air contaminant concentrations and the effect of the proposed facilities on those concentrations.
7. The amount of greenhouse gases being emitted; this is not within the scope of this air permit application;
8. The possible effect of the proposed project on water quality;
9. That the project will consume too much water;
10. That the applicant chose the site because Grayson County is in attainment; counties south are not and Collin County, part of the Dallas-Fort Worth nonattainment area, begins approximately 1/4 mile south of the planned site;
11. Protestants request an ambient air monitor be located near them to monitor the effect of the power plant on them;
12. Protesters are concerned about upsets and catastrophic events at the site and how they would be handled;
13. Plant brings no benefit to the area, as the electricity will be used elsewhere;
14. Effects on property values because of the proposed plant;
15. Possible noise and light pollution from the proposed plant;
16. Security at the plant during construction and operation;
17. Possible radio frequency interference that the proposed plant may cause;
18. Traffic and road damage that will be caused by the construction of the power plant; and
19. Navasota would probably sell the plant after it was built, and that it may not have to honor commitments.

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Of these issues, the following are relevant and material to the decision on this air quality application:

1. Impact the proposed facilities will have on the health and enjoyment of requestors' property; requestors indicated they have illnesses or family members with illnesses such as asthma or reduced lung function and heart conditions among other ailments which will be exacerbated by the air pollution from the plant;
2. Impact of the emissions on livestock and plants like pecan trees; potential for corrosive effects of emissions, including the potential for rusting of fences, barns, and farm equipment;
3. Effects of the various criteria pollutants (CO, NO<sub>x</sub>, PM, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and Pb) on people and property; health effects from the emissions of Pb; the impacts of PM, VOCs, CO, SO<sub>2</sub>, and NO<sub>x</sub> including long-term health effects from exposure to these contaminants;
4. Cumulative effects of this and other sources in the area;
5. Impact of construction equipment emissions; and
6. Existing ambient air contaminant concentrations and the effect of the proposed facilities on those concentrations.

The commission must consider distance restrictions or other limitations imposed by law on the affected interest, the likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person, and the likely impact of the regulated activity on the use or the impact on the natural resource by the person. For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air that the requestors breathe, and they have indicated a manner in which emissions from the plant could impact it. Because distance from the proposed facility is key to the issue whether or not there is a likely impact of the regulated activity on a person's interests such as the health and safety of the person, and on the use of property of the person, the ED has identified an area of approximately 1 mile from the proposed facility on the provided map.

The ED has identified the following requestors who reside at or within 1 mile of the proposed facility and thus may be affected in a manner different from the general public (see the attached map for individual requestors): Pamela Boddie, Virginia Kennedy, Brent Kennedy, Chrissy Marie Koth, Bobby McKee, Martha McKee, Delanna Mitchell, Michael R. Mitchell, Christopher Scott Moreno, Brittany Nettles, Rebecca A. Rodriguez, Brad Spence, and Tracy Spence. The following hearing requestors have provided addresses that are greater than one mile from the facility: Christy Bryant, Jeffery A. Farley, James Firtos, Emily and David Franklin, Donna Franus, Theresa Green, Kelly & Frank Herndon, George & Mollie Kennemer, Charles Netherlain, Velynda Short, Amanda Stromquist, and Lori Jean Williams. Because these requestors live more than one mile from the proposed facility, the ED finds that it is not likely to impact the health and safety of these requestors or the use of their property in a manner different from the general public. Therefore, they are not affected persons under 30 TAC § 55.203.

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One protestant, Lori Jean Williams, acknowledges that she does not live in the area of the proposed facility, but claims to be concerned about the health of her brother, who she claims lives 250 yards from the proposed facility. Ms. Williams does not claim to be asking for the hearing on behalf of her brother, but notes health concerns for herself and her family when visiting. Although Ms. Williams does not name her brother, the address she provides is the same address for Delanna and Michael Mitchell, who independently requested a contested case hearing on their own behalf. However, as Ms. Williams is not asking as a representative of her brother or his family, and because Ms. Williams would not be living near the proposed facility, she herself is not likely to be impacted differently than other members of the public.

**D. Do those groups who requested a hearing meet the group or associational standing requirements?**

Rita Beving requested a hearing on this permit application on behalf of the Dallas Sierra Club. The ED has analyzed the request of the Dallas Sierra Club, and found that the group lacks the required associational standing to request a hearing on this application. The group failed to identify a specific member of the organization who would have standing in their own right to independently request a contested case hearing as an affected person. Without a specific identified member who would have such standing, the Dallas Sierra Club cannot meet the requirement of § 55.205(a)(1), and does not have the associational status necessary to request a contested case hearing on this application.

**E. Which issues in this matter should be referred to SOAH for hearing?**

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states that requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy. In the absence of a response from any of the hearing requesters or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has included all of the issues raised by hearing requesters regarding this application as listed below.

**1. Issues involving questions of fact.**

Protestants raised the following issues in comments and hearing requests filed on this application:

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1. Impact the proposed facilities will have on the health and enjoyment of requestors' property; requesters indicated they have illnesses or family members with illnesses such as asthma or reduced lung function and heart conditions among other ailments which will be exacerbated by the air pollution from the plant;
2. Impact of the emissions on livestock and plants like pecan trees; potential for corrosive effects of emissions, including the potential for rusting of fences, barns, and farm equipment;
3. Effects of the various criteria pollutants (CO, NO<sub>x</sub>, PM, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and Pb) on people and property; health effects from the emissions of Pb; the impacts of PM, VOCs, CO, SO<sub>2</sub> and NO<sub>x</sub> including long-term health effects from exposure to these contaminants;
4. Cumulative effects of this and other sources in the area;
5. Impact of construction equipment emissions;
6. Existing ambient air contaminant concentrations and the effect of the proposed facilities on those concentrations.
7. The amount of greenhouse gases being emitted; this is not within the scope of this air permit application;
8. The possible effect of the proposed project on water quality;
9. That the project will consume too much water;
10. That the applicant chose the site because Grayson County is in attainment; counties south are not and Collin County, part of the Dallas-Fort Worth nonattainment area, begins approximately 1/4 mile south of the planned site;
11. Protestants request an ambient air monitor be located near them to monitor the effect of the power plant on them;
12. Protesters are concerned about upsets and catastrophic events at the site and how they would be handled;
13. Plant brings no benefit to the area, as the electricity will be used elsewhere;
14. Effects on property values because of the proposed plant;
15. Possible noise and light pollution from the proposed plant;
16. Security at the plant during construction and operation;
17. Possible radio frequency interference that the proposed plant may cause;
18. Traffic and road damage that will be caused by the construction of the power plant; and
19. Navasota would probably sell the plant after it was built, and that it may not have to honor commitments.

**2. Were the issues raised during the public comment period?**

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The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on July 11, 2014 and ended January 26, 2015. The RTC was filed on April 13, 2015. The 30-day period to file the Request for Reconsideration and contested case hearing requests ended on May 13, 2015. All of the issues listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period.

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

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health and Safety Code) and the TCAA. The relevant sections of the TCAA are found in Subchapter C (Permits). Subchapter C requires the commission to grant a permit to construct or modify a facility if the commission finds the proposed facility will use at least the best available control technology (BACT) and the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. In making this permitting decision, the commission may consider the Applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission should review each issue to determine if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

The ED finds the following issues relevant and material to the decision on the application:

1. Impact the proposed facilities will have on the health and enjoyment of requestors' property; requestors indicated they have illnesses or family members with illnesses such as asthma or reduced lung function and heart conditions among other ailments which will be exacerbated by the air pollution from the plant;
2. Impact of the emissions on livestock and plants like pecan trees; potential for corrosive effects of emissions, including the potential for rusting of fences, barns, and farm equipment;
3. Effects of the various criteria pollutants (CO, NO<sub>x</sub>, PM, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and Pb) on people and property; health effects from the emissions of Pb; the impacts of PM, VOCs, CO, SO<sub>2</sub>, and NO<sub>x</sub> including long-term health effects from exposure to these contaminants;
4. Cumulative effects of this and other sources in the area;
5. Impact of construction equipment emissions; and
6. Existing ambient air contaminant concentrations and the effect of the proposed facilities on those concentrations.

The ED finds the following issues, although within the TCEQ's jurisdiction, are not within the scope of this air permit review and thus not material to the decision on the application:

7. The amount of greenhouse gases being emitted;

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8. The possible effect of the proposed project on water quality;
9. That the project will consume too much water;
10. That the applicant chose the site because Grayson County is in attainment;
11. Protestants request an ambient air monitor be located near them to monitor the effect of the power plant on them; and
12. Protestants are concerned about upsets and catastrophic events at the site and how they would be handled.

The ED finds the following issues are beyond the jurisdiction of TCEQ and thus not material to the decision on the application:

13. Plant brings no benefit to the area, as the electricity will be used elsewhere;
14. Effects on property values because of the proposed plant;
15. Possible noise and light pollution from the proposed plant;
16. Security at the plant during construction and operation;
17. Possible radio frequency interference that the proposed plant may cause;
18. Traffic and road damage that will be caused by the construction of the power plant; and
19. Navasota would probably sell the plant after it was built, and that it may not have to honor commitments.

#### **IV. Maximum Expected Duration of the Contested Case Hearing**

The ED recommends the contested case hearing, if held, should last no longer than six months from the preliminary hearing to the proposal for decision.

#### **V. Executive Director's Recommendation**

The Executive Director respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed.
- B. Find that the requests of the following persons satisfy the requirements for form under 30 TAC § 55.201(d) and are affected under 30 TAC § 55.203: Pamela Boddie, Virginia Kennedy, Brent Kennedy, Chrissy Marie Koth, Bobby McKee, Martha McKee, Delanna Mitchell, Michael R. Mitchell, Christopher Scott Moreno, Brittany Nettles, Rebecca A. Rodriguez, Brad Spence, and Tracy Spence.
- C. Find all other hearing requesters are not affected persons under 30 TAC § 55.203 in this matter;

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D. Find that Sierra Club is not an affected party under 30 TAC § 55.205(a).

E. If the commission determines any requester is an affected person, refer the following issues to SOAH:

1. Impact of the proposed facilities will have on the health and enjoyment of requestors' property; requestors indicated they have illnesses or family members with illnesses such as asthma or reduced lung function and heart conditions among other ailments which will be exacerbated by the air pollution from the plant;
2. Impact of the emissions on livestock and plants like pecan trees; potential for corrosive effects of emissions, including the potential for rusting of fences, barns, and farm equipment;
3. Effects of the various criteria pollutants (CO, NO<sub>x</sub>, PM, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and Pb) on people and property; health effects from the emissions of Pb; the impacts of PM, VOCs, CO, SO<sub>2</sub>, and NO<sub>x</sub> including long-term health effects from exposure to these contaminants;
4. Cumulative effects of this and other sources in the area;
5. Impact of construction equipment emissions; and
6. Existing ambient air contaminant concentrations and the effect of the proposed facilities on those concentrations.

F. Find the maximum expected duration of the contested case hearing, if held, would be six months.

**Executive Director's Response to Hearing Requests  
Navasota North Country Peakers Operating Company I, L.L.C.  
Permit Nos. 121051 and PSDTX1418; TCEQ Docket No. 2015-0566-AIR  
Page 13 of 13**

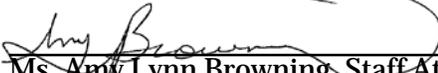
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Division Director  
Environmental Law Division



~~Ms. Amy Lynn Browning, Staff Attorney~~

Environmental Law Division

State Bar Number 24059503

(512) 239-0891

PO Box 13087, MC 173

Austin, Texas 78711-3087

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

# ED's Response to Hearing Requests

Navasota North Country Peakers Operating Company I, L.L.C./Van Alstyne Energy Center Permit Nos. 121051 and PSDTX1418

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

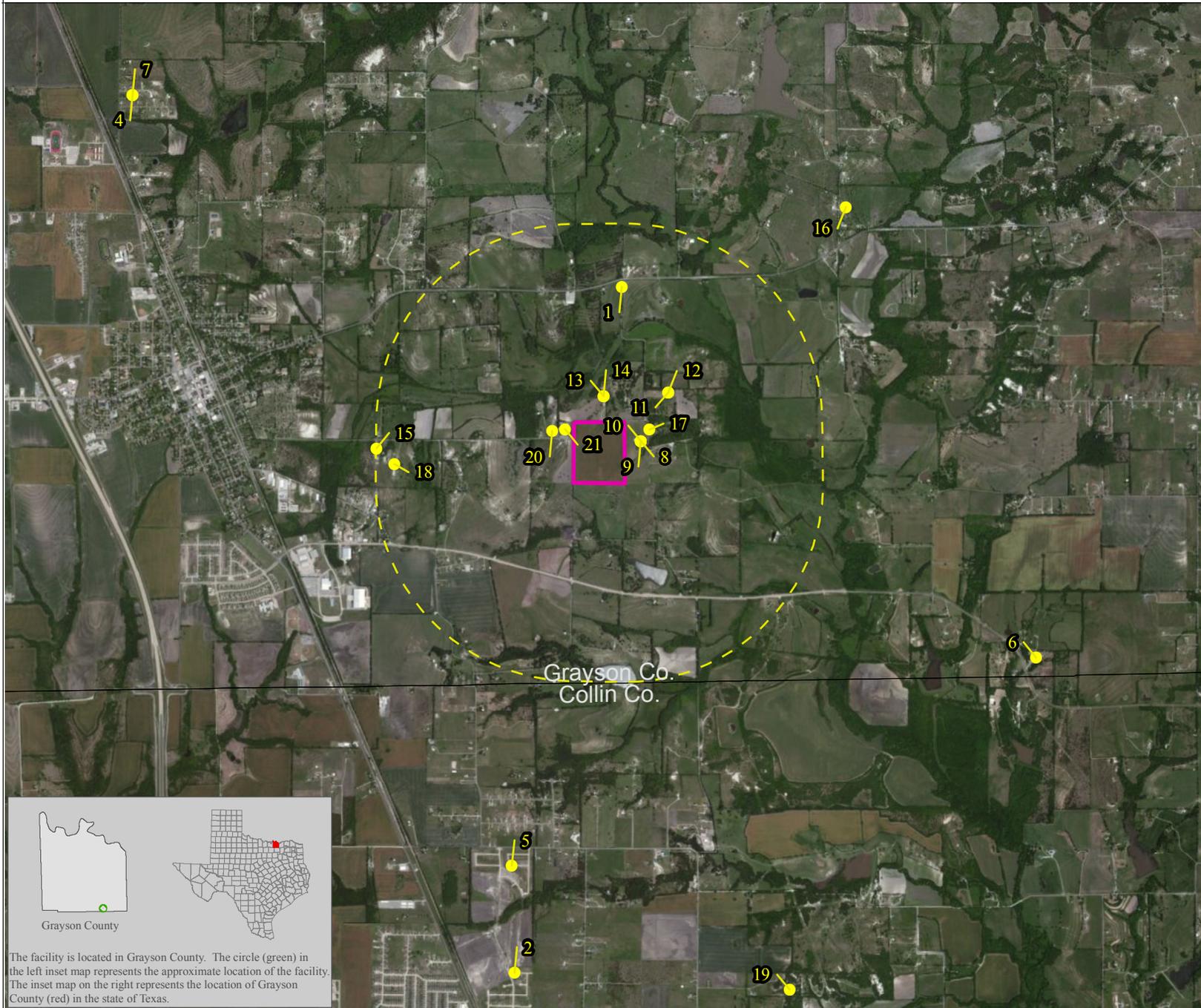


Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

Date: 6/2/2015



- Facility
- 1 mile radial distance from facility
- County
- Requester (25 total) (20 visible)



The facility is located in Grayson County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Grayson County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

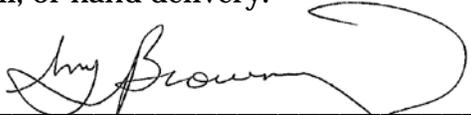
Map Key for ED's Response to Hearing Request;

Navasota North Country Peakers Operating Company I, L.L.C./Van Alstyne Energy Center Permit Nos. 121051 and PSDTX1418

Map ID	Requester Name	Requestor Address		Shown on Map
1	BODDIE, PAMELA	614 Willy Vester Rd	VAN ALSTYNE	Yes
2	BRYANT, CHRISTY	243 LAMONT RD	ANNA	Yes
3	FARLEY, JEFFREY A	21 STONE MARSHELL RD	VAN ALSTYNE	No
4	FIRTOS, JAMES	60 BRAD CT	VAN ALSTYNE	Yes
5	FRANKLIN, EMILY & DAVID	332 CARLYLE ST	VAN ALSTYNE	Yes
6	FRANUS, DONNA	3969 FM 3133	VAN ALSTYNE	Yes
7	GREEN, THERESA	60 BRAD CT	VAN ALSTYNE	Yes
8	KENNEDY, VIRGINIA	921 WILLY VESTER RD	VAN ALSTYNE	Yes
9	KENNEDY, BRENT	921 WILLY VESTER RD	VAN ALSTYNE	Yes
10	KOTH, CHRISSY MARIE	921 WILLY VESTER RD	VAN ALSTYNE	Yes
11	MCKEE, BOBBY	660 WILLY VESTER RD	VAN ALSTYNE	Yes
12	MCKEE, MARTHA	660 WILLY VESTER RD	VAN ALSTYNE	Yes
13	MITCHELL, DELANNA	1879 BALLARD	VAN ALSTYNE	Yes
14	MITCHELL, MICHAEL R	1879 BALLARD	VAN ALSTYNE	Yes
15	MORENO, CHRISTOPHER SCOTT	690 BALLARD RD	VAN ALSTYNE	Yes
16	NETHERLAIN, CHARLES	114 EDWARDS RD	VAN ALSTYNE	Yes
17	NETTLES, BRITTANY	890 WILLY VESTER RD	VAN ALSTYNE	Yes
18	RODRIGUEZ, REBECCA A	798 BALLARD RD	VAN ALSTYNE	Yes
19	SHORT, VELYNDA	2960 WINDING OAKS TRL	ANNA	Yes
20	SPENCE, BRAD	1591 BALLARD RD	VAN ALSTYNE	Yes
21	SPENCE, TRACY	1631 BALLARD RD	VAN ALSTYNE	Yes
22	STROMQUIST, AMANDA	1813 WALNUT WAY	ANNA	No
23	WILLIAMS, LORI JEAN	5068 THERESA DR	DENISON	No
24	KENNEMER, GEORGE & MOLLIE		ANNA	No
25	HERNDON, KELLY & FRANK	239 BELFORD STREET SOUTH	ANNA	No

**CERTIFICATE OF SERVICE**

On the 8<sup>th</sup> day of June, 2015, a true and correct copy of the foregoing instrument was served on all persons on the mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic mail, or hand delivery.

  
\_\_\_\_\_  
Amy L. Browning

**MAILING LIST**  
**NAVASOTA NORTH COUNTRY PEAKERS OPERATING COMPANY I, L.L.C.**  
**DOCKET NO. 2015-0566-AIR; PERMIT NOS. 121051/PSDTX 1418**

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See attached list.

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