

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

August 9, 2011

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

**Re: SOAH Docket No. 582-10-5940; TCEQ Docket No. 2010-0403-IWD; In Re:  
NAVARRO GENERATING LLC**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than Monday, August 29, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than Thursday, September 8, 2011.

This matter has been designated **TCEQ Docket No. 2010-0403-IWD; SOAH Docket No. 582-10-5940**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "Sarah G. Ramos".

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SARAH G. RAMOS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SGR:cm  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS  
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**SERVICE LIST**

**AGENCY:** TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
(TCEQ)

**STYLE/CASE:** NAVARRO GENERATING LLC

**SOAH DOCKET NUMBER:** 582-10-5940

**TCEQ DOCKET NUMBER:** 2010-0403-IWD

STATE OFFICE OF ADMINISTRATIVE HEARINGS	ADMINISTRATIVE LAW JUDGE
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**PARTIES**

**REPRESENTATIVE/ADDRESS**

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<p><b>OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b></p>	<p><b>Amy Swanholm Office of the Public Interest Counsel Texas Commission on Environmental Quality MC-103 P.O. Box 13087 Austin, TX 78711-3087 <a href="mailto:aswanholm@tceq.state.tx.us">aswanholm@tceq.state.tx.us</a> Tel 512/239-6363 Fax 512/239-6377</b></p>

**NAVARRO GENERATING, LLC**

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**CHARROLL CHAPEL CEMETERY  
CARROLL CHAPEL INDIVIDUAL PARTIES**

**Sharon Holmes, Pastor**  
**CARROLL CHAPEL A.M.E. CHAPPEL**  
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Margie Roberts Duke  
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281/288-3274

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**PARTIES WITHIN ONE MILE OF THE  
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**PARTIES MORE THAN ONE MILE BUT LESS THAN THREE MILES FROM THE PROPOSED PLANT**

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**PRO SE**

**Buddy Green**  
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**COPP FOR CLEAN AIR**

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<b>CITIZENS OPPOSED TO POWER PLANTS And Eddie Pevehouse</b>	<b>Sarah Clower Keathley KEATHLEY &amp; KEATHLEY 412 W. 3<sup>rd</sup> Ave. Corsicana, TX 75110 903/872-4244 903/872-4102 amanda @keathleykeathley.com</b>
<b>(Courtesy Copy)</b>	<b>Janet Jacobs CORSIANA DAILY NEWS 903/872-3931 jacobs@corsicanadailysun.com</b>
<b>(Courtesy Copy)</b>	<b>Julianne Dodge NAVARRO COUNTY TIMES 111 DW 3<sup>rd</sup> Ave., Corsicana, TX 75110 903/874-1888 news@navarrocountytimes.com</b>
<b>(Courtesy Copy)</b>	<b>Mollie Smith District Director Sen. Birdwell SD@@@ 900 Austin Ave., Suite 403 WACO, TX 76701 mollie10gold@gmail.com</b>

xc: Docket Clerk, State Office of Administrative Hearings  
Docket Clerk, Office of the Chief Clerk, TCEQ, Fax No. (512) 239-3311

**SOAH DOCKET NO. 582-10-5940  
TCEQ DOCKET NO. 2010-0403-IWD**

<b>APPLICATION OF NAVARRO</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>GENERATING, LLC</b>	§	<b>OF</b>
	§	
<b>FOR PERMIT NO. WQ0004870000</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Navarro Generating LLC (Applicant) has moved to dismiss without prejudice its application for proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004870000 to authorize the discharge of treated wastewater and treated storm water in Navarro County, Texas. The Administrative Law Judge (ALJ) agrees that the application should be dismissed without prejudice but recommends Applicant be required to pay one protesting party's expenses.

**I. PROCEDURAL HISTORY**

Applicant filed the TPDES permit with the Texas Commission on Environmental Quality (TCEQ or Commission) on October 22, 2008. By order dated June 30, 2010, TCEQ referred several issues raised by affected parties to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

The preliminary hearing convened on January 13, 2011, in Corsicana, Texas, and certain parties were designated. Based on motions filed after the preliminary hearing, an additional party was named and other parties were re-aligned. The named parties are:

Applicant – represented by Kenneth Ramirez;

The Executive Director of the TCEQ – represented by TCEQ Staff Attorneys Christiaan Siano and Chris Ekoh;

The Office of Public Interest Counsel of the TCEQ (OPIC) – represented by Amy Swanholm;

Persons concerned about Carroll Chapel Cemetery: including Hughe T. Baldwin, Margie Roberts Duke, Lendell Jones, Ala N. Henly, William Davis, Leland Adams, Theresa M. Edison, and Sharon Holmes – represented by Ms. Holmes, Pastor of Carroll Chapel A.M.E. Church;

Individual parties who are within one mile of the proposed plant, including Ricky B. Anderson, Patricia Jones, and Humberto Huerta – represented by Ricky B. Anderson;

Individual parties who are more than one mile but less than three miles from the proposed plant: Carla Steele, Billy Steele, Pat E. Blank, Jana Hayes, Lori Tigie, Ella Mae Jones, David McHargue – represented by Ms. Steele;

Buddy Green – *pro se*;

Margaret Boseley – *pro se*;

COPPS for Clean Air – represented by Wendi Hammond;

Citizens Opposed to Power Plants – represented by Sarah Clower Keathley; and

Eddie Pevehouse – represented by Ms. Keathley.

On April 12, 2011, Applicant filed a Motion to Dismiss its TPDES application without Prejudice. The record closed on June 15, 2001, after the parties had time to file responses to the motion.

### III. ARGUMENTS AND APPLICABLE LAW

Protestant Buddy Green argues that Applicant should not be allowed to disadvantage a Protestant by withdrawing and refilling the same permit application. This would cause duplication of resources and expenses by another party, he asserts. He asked for reimbursement of the expenses he incurred in protesting the application, calculated as follows:

Date	Activity	Cost
Jan. 13, 2011	Travel from Spring, Texas, to Corsicana for preliminary hearing 338—miles round trip @ \$.51 per mile	\$172.38
Jan. 24, 2011	Notices—mailing, fax, and postage expenses	\$ 9.57
April 2, 2011	Travel from Spring, Texas, to Corsicana for case preparation, discussions regarding Applicant’s offer—338 miles round trip @ \$.51 per mile	\$172.38
April 25, 2011	Notices—mailing, fax, postage expenses (estimated)	\$ 9.00
		\$363.33 Total

Other Protestants did not seek reimbursement for their costs but support Mr. Green’s request, citing 30 TEX ADMIN. CODE (TAC) § 80.25. OPIC also supports Mr. Green’s request, and the Executive Director does not oppose Applicant’s withdrawal of the application “provided it complies with 30 TAC § 80.25.” That rule allows a party to withdraw an application at any time before the proposal for decision is issued. It also provides that when the parties do not agree to withdrawal without prejudice, the ALJ should forward the application, the request to withdraw, and a recommendation on the request to the Commission. In addition, the rule states:

(e) An applicant is entitled to an order dismissing an application without prejudice if:

(1) the parties, or the applicant, executive director, and public interest counsel if no parties have been named, agree in writing;

(2) the applicant reimburses the other parties all expenses, not including attorneys fees, that the other parties have incurred in the permitting process for the subject application; or

(3) the commission authorizes the dismissal of the application without prejudice.

COPPS asserts the rule “plays a significant role in recognizing and upholding the value of public participation in the permitting process.” COPPS argues that without such a rule, “applicants could attempt to deplete a protestant’s limited resources by repeatedly dismissing and

re-filing the same or similar application until a protestant has little or no resources left to meaningfully participate in a full contested case proceeding.” According to COPPS, Applicant has an air permit application for the same facility pending at TCEQ and has not withdrawn that application, which indicates that Applicant intends to re-file the same or similar application sometime in the future.

Applicant notes that Mr. Green voluntarily sought party status in order to oppose the application and could not have expected that his costs would be reimbursed. Mr. Green can participate again in the public hearing process if Applicant decides to re-apply for a permit. Based on these arguments, Applicant asks the Commission to deny Mr. Green’s request for reimbursement.

#### IV. ALJ’S RECOMMENDATION

The case should be dismissed and Applicant should reimburse Mr. Green for his expenses. TCEQ’s rule is straightforward and clearly provides for payment of the other parties’ expenses. If the case is brought again, Mr. Green will have to incur the same costs of driving to a location to seek party status and participate. Since he already had to do so this time, it is reasonable to allow him to recover his costs. Therefore, the ALJ recommends dismissing this action without prejudice and awarding \$363.33 in costs to Mr. Green.

**Signed August 09, 2011.**



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**SARAH G. RAMOS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER  
DISMISSING WITHOUT PREJUDICE THE APPLICATION OF  
NAVARRO GENERATING LLC FOR TPDES PERMIT NO. WQ0004870000  
SOAH DOCKET NO. 582-10-5940  
TCEQ DOCKET NO. 2010-0403-IWD**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Navarro Generating LLC (Applicant) for proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004870000. A Proposal for Decision (PFD) was presented by Sarah G. Ramos, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. On October 22, 2008, Applicant applied to the TCEQ for proposed TPDES Permit No. WQ0004870000 to authorize the discharge of treated wastewater and storm water in Navarro County, Texas.
2. Applicant published the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit on November 29, 2008, in the *Corsicana Daily Sun*, and on December 10, 2008, in Spanish in *la Prensa Comunidad Hispanic Newspaper*, which are newspapers in general circulation in Navarro County, Texas.

3. The Executive Director determined that the application and draft TPDES Permit No. WQ0014778001 met all legal requirements and recommended issuance of the Draft Permit.
4. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on July 2, 2009, in the *Corsicana Daily Sun*, and on June 29, 2009, in Spanish in *la Prensa Comunidad Hispanic Newspaper*, which are newspapers in general circulation in Navarro County, Texas.
5. Following receipt of several requests for a contested case hearing, the Commission considered the requests in an open meeting on June 30, 2010, and referred several issues to SOAH for consideration in a contested case hearing.
6. Notice of the preliminary hearing was published in the *Corsicana Daily Sun* on October 3, 2010.
7. The Commission's Chief Clerk sent notice of the preliminary hearing to all interested persons on October 29, 2010. The notice included the time, date, and nature of the hearing; legal authority and jurisdiction under which the hearing would be held; applicable statutes and rules; and the matters asserted.
8. The preliminary hearing convened on January 13, 2011, in Corsicana, Texas.
9. The named parties were:  
Navarro Generating, LLC (Applicant) – represented by Kenneth Ramirez;

The Executive Director of the TCEQ – represented by TCEQ Staff Attorneys Christiaan Siano and Chris Ekoh;

The Office of Public Interest Counsel of the TCEQ (OPIC) – represented by Amy Swanholm;

Persons concerned about Carroll Chapel Cemetery: including Hughe T. Baldwin, Margie Roberts Duke, Lendell Jones, Ala N. Henly, William Davis, Leland Adams, Theresa M. Edison, and Sharon Holmes – represented by Ms. Holmes, Pastor of Carroll Chapel A.M.E. Church;

Individual parties who are within one mile of the proposed plant, including Ricky B. Anderson, Patricia Jones, and Humberto Huerta – represented by Ricky B. Anderson;

Individual parties who are more than one mile but less than three miles from the proposed plant: Carla Steele, Billy Steele, Pat E. Blank, Jana Hayes, Lori Tigue, Ella Mae Jones, David McHargue – represented by Ms. Steele;

Buddy Green – *pro se*;

Margaret Boseley – *pro se*;

COPPS for Clean Air – represented by Wendi Hammond;

Citizens Opposed to Power Plants – represented by Sarah Clower Keathley; and Eddie Pevehouse – represented by Ms. Keathley.

10. On April 12, 2011, Applicant filed a Motion to Dismiss its application without prejudice.
11. The record closed on June 15, 2001, after the parties filed responses to the motion.
12. Protestant Buddy Green did not agree that the contested case should be dismissed without prejudice and asked for reimbursement of the expenses he incurred in protesting the application, calculated as follows:

<b>Date</b>	<b>Activity</b>	<b>Cost</b>
Jan. 13, 2011	Travel from Spring, Texas, to Corsicana for preliminary hearing 338—miles round trip @ \$.51 per mile	\$172.38
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April 25, 2011	Notices—mailing, fax, postage expenses (estimated)	\$ 9.00
		\$363.33 Total

13. Commission rule 30 TEX. ADMIN. CODE (TAC) §80.25 rule allows a party to withdraw an application at any time before a PFD is issued, but it also provides that an applicant is entitled to an order dismissing an application without prejudice if:

- the parties, or the applicant, executive director, and public interest counsel if no parties have been named, agree in writing;
- the applicant reimburses the other parties all expenses, not including attorneys fees, that the other parties have incurred in the permitting process for the subject application; or
- the Commission authorizes the dismissal of the application without prejudice.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this application. TEX. WATER CODE chs. 5 and 26.
2. SOAH has jurisdiction over this hearing process and the authority to issue a proposal for decision with findings of fact and conclusions of law. TEX. WATER CODE §§ 5.311 and 26.021, TEX. GOV'T CODE ch. 2003, and 30 TAC § 80.25.
3. Notice of the application and the preliminary hearing was properly provided to the public and to all parties. TEX. WATER CODE ANN. §§ 5.115 and 26.028; TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; 30 TAC §§ 39.405 and 39.551.
4. In accordance with 30 TAC § 80.25, Applicant should pay costs incurred by Mr. Green in the amount of \$363.33.

### III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application of Navarro Generating LLC for Texas Pollutant Discharge Elimination System Permit No. WQ0004870000 is dismissed without prejudice.
2. In accordance with 30 TAC § 80.25, Applicant shall pay costs incurred by Buddy Green in the amount of \$363.33.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to each of the parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Bryan W. Shaw, Ph.D., Chairman**  
**For the Commission**