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RQ-0601-KP

May 28, 2025

Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

*Re: Request for Attorney General Opinion Regarding TCEQ Enforcement Authority Over
the United States Army Corps of Engineers Mitigation Property in Delta County*

Dear Attorney General Paxton:

Pursuant to Section 402.042 of the Texas Government Code, we respectfully request an Attorney General Opinion concerning whether the Texas Commission on Environmental Quality (TCEQ) may exercise enforcement authority against the United States Army Corps of Engineers (USACE), a federal agency, for ongoing environmental impacts stemming from its mitigation property located in Delta County, Texas.

Background:

It has come to the attention of Delta County officials and affected residents that the USACE mitigation site is discharging sediment and vegetative debris into a waterway regulated by the TCEQ. These discharges are contributing to erosion control failures, damage to both county- and state-maintained roads, and degradation of private property. Further, the runoff from the site is reportedly intensifying downstream flooding and raising substantial public safety concerns.

We understand that Chapter 26 of the Texas Water Code and related provisions in Title 30 of the Texas Administrative Code—specifically Chapters 305 and 307—govern water quality standards and permitting of discharges into Texas waterways. However, because the mitigation land is federally owned and managed, a legal question has arisen as to whether the doctrine of sovereign immunity prohibits the TCEQ from initiating enforcement actions against the USACE.

Questions Presented:

1. Does the doctrine of sovereign immunity bar the Texas Commission on Environmental Quality from initiating enforcement proceedings against the United States Army Corps of Engineers under Chapter 26 of the Texas Water Code or related administrative provisions in Title 30, Texas Administrative Code, for discharges occurring on federally owned mitigation property?
2. If sovereign immunity does not apply, what enforcement mechanisms, if any, may the TCEQ exercise against a federal agency under Texas environmental law?

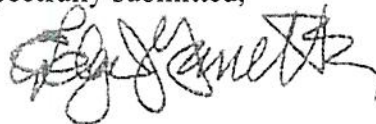
Importance of Clarification:

A definitive legal interpretation from your office is critical in determining the ability of state agencies to protect Texas waterways and infrastructure from environmental impacts originating on federal land. This opinion will directly affect Delta County's strategy in mitigating damage and responding to public safety risks arising from this ongoing situation.

We are in the process of collecting and submitting supplemental documentation, including maps, photographs, and records of prior communication with TCEQ and USACE, which may assist in your review of this matter.

Please do not hesitate to contact our office should you require additional information or clarification regarding this request.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Edgar J. Garrett, Jr.", with a stylized flourish at the end.

Edgar J. Garrett, Jr.
Delta County Attorney