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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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*Protecting Texas by Reducing and Preventing Pollution*

OCT 26 2011

September 26, 2011

**OPINION COMMITTEE**

VIA HAND DELIVERY

FILE # ML-46854-11  
I.D. # 46854

**RQ-1009-BA**

Mr. Jeff Graham, Acting Division Chief  
Financial and Tax Litigation Division  
Office of the Attorney General  
300 West 15<sup>th</sup> Street  
6<sup>th</sup> Floor  
Austin, Texas 78701

RE: Texas Emissions Reduction Plan (TERP) litigation

Dear Mr. Graham:

The purpose of this letter is to seek your assistance in bringing clarity to a pressing legal issue related to the Texas Emissions Reduction Program (TERP).

As you may know, in December 2010, the State Auditor's Office completed an audit of our TERP program. In finding that TCEQ should make further efforts to enforce the TERP grants, the SAO recommended that TCEQ implement warrant holds immediately upon a grantee's failure to respond to an invoice.

During the June 13, 2011, meeting with your Office, I understand that there was general agreement from you, Ronald DelVento and David Mattax that the warrant hold procedures found in Section 403.055 of the Government Code is an available tool to the TERP enforcement process. However, we have limited experience with this process. Accordingly, TCEQ requests a formal written opinion from your office about the appropriateness of the warrant hold process for the TERP program.

Our specific questions are: (1) whether an unliquidated claim for breach of contract damages constitutes a debt to the state for purposes of the statute; and (2) how to satisfy the specific requirement of Section 403.055(g) that an agency provide the person with an opportunity to exercise any due process or other constitutional or statutory protection that must be accommodated before the agency or the state may begin a collection action or procedure.

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To assist you with reviewing these questions, please see the TERP Program's Usage Monitoring Process and Equipment & Engine Verification Procedure (attached), as well as the SAO audit report, available at <http://www.sao.state.tx.us/reports/main/11-012.pdf>.

Should you need additional information, please do not hesitate to contact me at (512) 239-2584. Thank you for your assistance and consideration of this matter.

Sincerely,

AS 1001-07  


David Timberger, Director  
General Law Division  
Texas Commission on Environmental Quality

DT:lo

Enclosures

cc: Elizabeth West, Senior Attorney  
Contracts and Employment Law and Ethics Section, General Law Division  
John Racanelli, Manager  
Revenue Operations, Financial Administration Division