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January 24, 1994

RD-654

The Honorable Dan Morales  
Attorney General  
The State of Texas

FILE # RD-00654-DM  
ML-24259-94

MTBJ

Dear Dan:

I.D.# 24259

I am writing to request an opinion from your office as to whether the Texas Natural Resources Conservation Commission (TNRCC) has statutory authority to charge fees for preparing "water depth protection letters" sought by members of the oil and gas industry. I am also writing to ask whether the agency may condition the sharing of public information on the receipt of geophysical logs and on the willingness of the public to request information by filing a "petition."

"Water depth protection letters" are used by the Railroad Commission to help it decide how best to protect groundwater resources; most commonly, the letters are used to help decide how deep to require surface casing on oil and gas wells. Traditionally, the TNRCC and its predecessor agencies have issued such guidance at the request of oil and gas operators at no charge.

In the last session of the Legislature, HB 2605 came before the Ways and Means Committee. Section 1 of the bill proposed amending Section 5.235 of the Water Code to authorize the TNRCC to collect fees from any person "who receives a service" from the commission. The concept of charging fees for any "service" would have replaced the current statutory authorization to charge fees for filing an "application or petition." However, the "fees-for-services" concept was removed before HB 2605 was approved by the Ways and Means Committee, thus preserving the principle that the TNRCC has general authority to charge fees only for "applications and petitions."

A major reason our committee deleted the "fees-for-services" concept from HB 2605 was to respond to concerns expressed by the oil and gas industry that the TNRCC might try to impose fees for writing water depth protection letters. The concerns were apparently well-founded, since the agency has recently proposed such fees even though the Legislature has not authorized the collection of fees for all services. Proposed Subchapter R, 30 TAC Sections 305.601 - 305.604, 19 TexReg 56 (January 4, 1994).

Perhaps in order to shore up the legality of the proposed rule, the TNRCC is proposing to begin providing information to the oil and gas industry regarding the occurrence of ground water only if the person seeking the information files a "petition."

Another feature of the proposed rule also catches my attention. This is a requirement in proposed Section 305.603 that persons seeking a certification of the depth of usable quality ground water must submit a "geophysical log of same or nearby well (preferably electric log)." I am not aware of a statute authorizing the TNRCC to collect such information from oil and gas

operators and, whether or not the agency has general authority to require such logs to be submitted, I am curious whether the agency has the right to withhold what it knows about the groundwater resources of this state until it gets a log in return.

In summary, the legal questions I have are as follows:

- (1) Does the TNRCC have general authority to charge fees for the review and processing of information requests when such fees are not specifically authorized by statute and the requests are not part of an "application or petition?"
- (2) Does the TNRCC have authority to require oil and gas operators to seek information regarding the occurrence of usable quality water only through the filing of an "application or petition?"
- (3) If the TNRCC does have authority to require oil and gas operators to seek information regarding the occurrence of usable quality water only through an "application or petition," must the agency require other members of the public to request this or other information in the same manner and must the agency charge fees for providing the information?
- (4) Does the TNRCC have authority to require oil and gas operators to file geophysical logs?
- (5) If the TNRCC does have authority to require oil and gas operators to file geophysical logs, does the agency also have authority to refuse to process requests for information relating to the occurrence of usable quality groundwater pending the receipt of such logs?
- (6) Does the TNRCC have authority to adopt proposed TAC sections 305.601 - 305.604, 19 TexReg 56 (January 4, 1994)?

I appreciate your consideration of this request and look forward to receiving your answers.

Respectfully submitted,



Tom Craddick  
Chairman  
House Ways and Means Committee