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DAVID COUNTS

CHAIRMAN

March 7, 1997

FILE # MC-39461-97

I.D. # 39461

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0017-JC

RE: Authority of the Texas Natural
Resource Conservation Commission
to Require Horizontal Property Line
Spacing for Water Wells

Dear General Morales:

Pursuant to the authority provided in Subchapter C, Chapter 402, Government Code, I request your opinion on the following question: Does the Texas Natural Resource Conservation Commission (TNRCC) have the authority to require horizontal property line spacing of water wells?

The relevant TNRCC rule, 30 TAC § 238.43(c), states, in pertinent part, that "(a) well shall be located a minimum horizontal distance of 100 ft. from a septic system absorption field, a dry litter poultry facility, and 50 feet from any property line provided the well is located a minimum horizontal distance from the sources of potential contamination in this subsection." Although the TNRCC may well have the authority to impose spacing requirements on wells from septic system fields or poultry facilities, I am unaware of any legislative or other authority that would allow the imposition of horizontal property line spacing requirements, especially since the latter have no relation to protecting groundwater from contamination.

Thank you for your attention to this matter.

Sincerely,

David Counts
Chairman