

MUNICIPAL SETTING DESIGNATIONS



Policy Description:

The 78th Texas Legislature passed HB 3152 (Texas Health and Safety Code 361.801-08) a Municipal Setting Designations (MSDs) statute, effective September 1, 2003 governing the potability of groundwater and the requirements for removing contaminants from groundwater. The law authorized the Texas Commission on Environmental Quality (TCEQ) to receive, process, and certify MSD applications for properties with contaminated groundwater that are located in cities or their extraterritorial jurisdiction. The TCEQ can certify an application **only** if there is local city support. The city has the choice to either support or not support an MSD application. Because of the need for city support, city officials can expect to be contacted by persons who wish to pursue state certification of an MSD. Cities can also pursue MSDs for their own use.

The MSD law creates a less expensive and faster alternative to the existing state environmental regulations governing the investigation and cleanup of contaminated groundwater. The statute substitutes a municipal ordinance or restrictive covenant for TCEQ regulations to protect the public against exposure to contaminated groundwater.

The MSD statute limits investigation and remediation requirements for contaminated groundwater on MSD properties when that groundwater is not used and will not be used in the future for potable water. Instead of restoring or controlling the contaminated zone so its groundwater can be used as potable water, a prohibition is placed on the designated groundwater beneath the MSD property to prevent its use as potable water.

Because people or animals, fish, and plants may be exposed to the contamination in other ways, the law still allows the TCEQ to require the contamination to be investigated and remediated for other concerns unrelated to potable-water use. For example, the inhalation of vapors originating from the groundwater contaminants or the discharge of groundwater contaminates to lakes or streams can be a concern.

Eligibility Criteria:

The statute specifies two eligibility requirements:

1. The proposed MSD property must be within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute.
2. There must be a public water supply system that meets state requirements that “supplies or is capable of supplying drinking water” to

the MSD property and all properties within one-half mile of the MSD property.

Any of the following “persons” can apply for an MSD:

- An individual
- A corporation
- An organization
- A government (including a local government) or governmental subdivision or agency
- A business trust, partnership, association, or any other legal entity.

How to Apply:

The MSD statute requires the applicant to provide a letter to notify the parties identified below that an MSD application is submitted to the TCEQ. The notice must be completed in advance of, or at the same time as, an application is submitted to the TCEQ. Specifically, the notice letter must be sent to:

- Each municipality:
 - In which the MSD property is located
 - With a boundary located within one-half mile from the MSD property boundary, or
 - That owns or operates a water supply well located within five miles from the MSD property Boundary;
- Each owner of a “private water well registered with the TCEQ” that is located within 5 miles from the MSD property boundary; and
- Each retail public utility that own or operates a groundwater supply well located within five miles of the MSD property boundary

In the notice letter, the applicant is required to:

- Identify the location of the proposed MSD property;
- State the reason for the MSD certification;

- State that municipalities and retail public utilities can make comments to the TCEQ;
- Identify the type of groundwater contaminants; and
- Name the party responsible for the contamination.

Notified parties have up to sixty days after they receive the notice letter to file comments with the TCEQ, if they choose to do so. The TCEQ cannot take action to deny or certify the application until sixty days after the notified parties receive those notices.

The city is not required by statute to accept, process, or support MSD applications. However, for an MSD to be certified by the TCEQ, municipal support for the application is paramount. Therefore, MSD certification is significantly controlled by the city. For the city where the proposed MSD property is located, the statute allows an MSD application to be certified only if that city council adopts either:

- An ordinance to prohibit potable use of the designated groundwater from beneath the MSD property and to appropriately restrict other uses of, and contact with, the designated groundwater; or
- A resolution that supports the filing of a restrictive covenant by the applicant that is enforceable by the municipality to prohibit potable use of designated groundwater from beneath the MSD property and to appropriately restrict other uses of, and contact with, the designated groundwater.

As with cities and retail public utilities (RPU's), the TCEQ's role is established by statute. The TCEQ is to receive and process applications, verify that proposed MSD properties meet statutory eligibility requirements, and verify that applications are administratively complete. If the MSD property is statutorily eligible and the application is complete, then the TCEQ will certify the application.

For additional information contact the Texas Commission on Environmental Quality at (512) 239-1000 or visit www.tceq.state.tx.us

Please contact the City of Corpus Christi's Economic Development Office at (361) 826-3850 to request the application or visit www.cctexas.com/economicdevelopment to download the application.

The City shall not grant any incentive unless the business submits a full and complete application and provides additional information as may be requested. The accuracy of the information in the application is the sole responsibility of the applicant. The applicant shall provide supporting documentation upon request.

Any misstatement of or error in fact may render an application null and void and may be cause for repeal of any ordinance adopted in reliance of said information.

If it is determined that the application meets these guidelines, a full and financial programmatic review will be conducted. This review may be done by City Staff, an outside agency or consultant and will ensure conformance with these guidelines.

Additional Resources:

Development Services

www.cctexas.com/developmentservices