

Municipal Setting Designations (MSDs) in North Central Texas

Frequently asked questions



What is an MSD?

An MSD is an official state designation given to property within a municipality or its extraterritorial jurisdiction that certifies that designated groundwater at the property is not used as potable water, and is prohibited from future use as potable water because that groundwater is contaminated in excess of the applicable potable-water protective concentration level. The prohibition must be in the form of a city ordinance, or a restrictive covenant that is enforceable by the city and filed in the property records.

What impacts will MSDs have on my community?

Individual communities will be affected in varying degrees by the concept of MSDs, and the community's source of drinking water will be the chief factor in their reaction to the legislation. In considering whether to support MSDs in general, if the city relies on groundwater for potable water, then groundwater contamination may pose a threat to the water supply. Cities are not required to accept, process or support MSD applications. However, for an MSD to be certified by TCEQ, municipal support for the application is required.

What laws apply to MSDs?

In 2003, the 78th Texas Legislature enacted the House Bill 3152, establishing Municipal Setting Designations (MSDs) codified as Texas Health and Safety Code §361/801-361.808. The law is administered by the Texas Commission on Environmental Quality (TCEQ) and is to be used in conjunction with the Voluntary Cleanup Program and other remediation programs.

What is the Purpose?

Texas Health and Safety Code, §361.801-808 provides authorization to the executive director of the TCEQ to certify MSDs for municipal properties to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

What are the Application and Requirements?

HB3152 provides for notice to the municipality containing the property and those within ½ mile of the boundary of the property to be designated. To be eligible, property must be within the corporate limits or extraterritorial jurisdiction of a municipality with a population of at least 20,000 and a public drinking water supply system capable of supplying drinking water to affected properties. Owners of groundwater supply facilities and private water wells within 5 miles of the property must also be notified. This notification must include, among other things, basic information such as:

- purpose, eligibility criteria, location and description, type of contamination, and identification of the parties responsible (if known).

The application must certify that the property is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water or to a restrictive covenant that prohibits groundwater use as potable water. The designation must be supported by a resolution passed by the city council of the municipality where it is located or the retail public utility.

The statute does not prohibit a city from imposing additional application procedures and requirements on the applicant. A municipality, retail public utility, or private well owner entitled to notice under this code

may file comments with the executive director within 60 days of receipt. Applications can be downloaded on-line at <http://www.tceq.state.tx.us/remediation/msd.html>

What is the Status of Pending Applications?

The table "Texas Municipal Setting Designations" describes properties in the state that have applications that are certified, denied, withdrawn, or pending. There have only been 21 applications and 15 MSD Certificates issued. Six cities in the North Central Texas region have enacted ordinances for the process of creating MSDs. These cities are:

- Dallas, Fort Worth, Garland, Grand Prairie, Grapevine and Irving.

This table may be accessed from the TCEQ web site at:

<http://www.tceq.state.tx.us/assets/public/remediation/msd/MSDAppChart.pdf>

How to Search for Water Wells?

In 1985, it became mandatory for water well drillers to submit log records of completed wells. These records are in several different filing systems within the TCEQ and the Texas Water Development Board (TWDB). Records also contain analytical data with each drilling record. TWDB maintains a file of well locations that have been verified with a field inventory inspection by TWDB personnel.

The TCEQ maintains a file system of well locations that were plotted from map information in water well logs, but this system was discontinued in 1986. There is also well information from 1986 to 1990 that contain locations that are somewhere within a 2.5 minute quadrant of a 7.5 minute quadrangle map that has not been precisely verified by a staff member. Locations that have been processed since June 1990 are filed solely on their county location and are not mapped.

It is possible that some water well drillers do not submit information to the proper state agency and thus there may be many privately drilled wells that are not accounted for. Consulting companies, such as Banks Information Solutions, list a disclaimer stating that the accuracy of their data and maps cannot be guaranteed, and it is not clear at this point what the best strategy for a well search would be.

The Texas Water Development Board has a searchable well database available at:

http://wiid.twdb.state.tx.us/ims/wwm_drl/viewer.htm?appno=1

Other Considerations?

The City of Fort Worth states on its web site that "(t)he groundwater contamination that is of concern in MSD situations is typically shallow, perched groundwater with a depth of less than 30 feet. It is separated from another underlying body of groundwater by a confining layer – often clay or rock – and doesn't threaten deeper aquifers". However, there don't appear to be any restrictions on depth to groundwater in the Health and Safety Code. From the TWDB maps it appears that parts of Western Tarrant County overlay the Paluxy aquifer and, in fact, this source is used by the City of Sansom Park for their drinking water supply. There don't appear to be any MSDs in this area as yet, but it is certainly a consideration.

Where can I get more information?

The TCEQ manages a listserv that receive periodic updates, and has also published an MSD guide for cities which is posted at <http://www.tceq.state.tx.us/remediation/msd.html>.