Municipal Setting Designations (MSD) And the City of Lubbock

MSD Legal History

- Impetus was property development
- Enacted into law in 2003 by the 78th Texas Legislature, effective September 1, 2003
- Codified in Texas Health and Safety Code Title 5, Subtitle B, Solid Waste Disposal Act, Subchapter 361.801

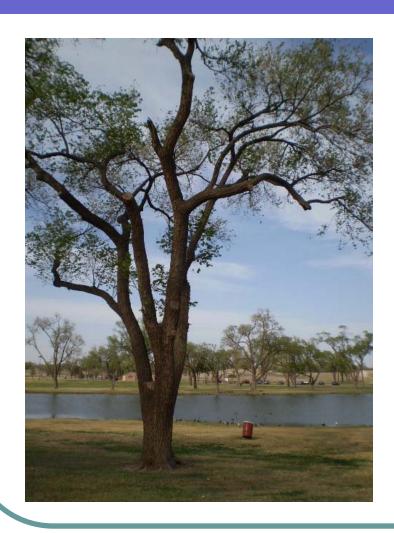


MSD In General

 Intended to prohibit the use of groundwater under an MSD because water quality presents an actual or potential threat to public health



MSD In General



Texas has determined that "substantial and legitimate interests are advanced by restricting the access to contaminated groundwater and reducing requirements for cleanup"

MSD In General

 Response actions are still required for other medias and pathways for exposure (e.g. air, soil, surface water)



Purpose of the Law

- Proposed to solve serious property remediation/redevelopment delays under VCP
- Reduces the need and/or scope of investigations and response actions addressing contaminants and their impact on groundwater
- Spur redevelopment of Brownfields by reducing responsibilities to cleanup groundwater
- Municipal action in the form of an ordinance or restrictive covenant is required

Eligibility for an MSD

- The property must be in the corporate limits of a municipality with a population of >20,000
- No potable water wells may exist within a ½ mile radius of the subject property



Eligibility for an MSD



A public water system must exist that is capable of supplying drinking water to the property for which the designation is sought and to properties within one-half mile

MSD Requires Support

- Application for an MSD must be supported by:
 - All property owners within the boundaries of the MSD,
 - Municipalities with corporate boundaries extending into the five mile radius,
 - Retail public utilities that have jurisdiction and/or facilities within 5 miles

MSD Requires Support

- Application must then be approved by the Texas Commission on Environmental Quality (TCEQ)
- See their website for additional information

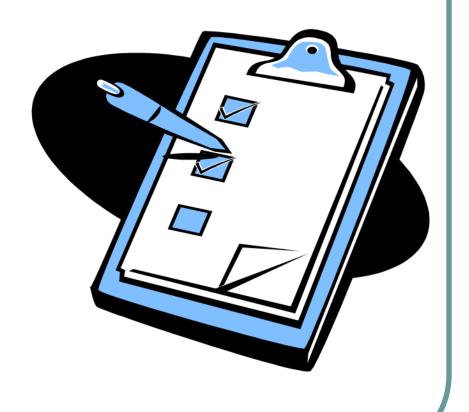
http://www.tceq.state.tx _us/remediation/msd _html





Applicant Must Provide Notice

- To each municipality
- To owners of property within ½ mile
- To owners of private water wells within 5 miles
- To each retail public utility that operates a groundwater supply well(s) within 5 miles



Governing Authority

- A public hearing is held by City Council to hear discussion and concerns from impacted parties/individuals
- Decision is made locally to support the application to TCEQ, and enact a binding ordinance
- Responsibility for enforcing the groundwater usage restrictions fall to the Municipality that passes the ordinance (as opposed to the TCEQ)

Lubbock's Actions

- Passed a procedural ordinance Jan '07 to allow MSD applications
- Applications require a certified survey and GPS coordinates
- Lubbock requires all adjacent public right-ofway to be included in MSD
- MSD Properties are added to GIS mapping system
- The City is considering an inter-local agreement with local groundwater district with well permitting authority

The City has Benefited

- First application was from the City for a mothballed electric power plant and surrounding municipal and industrial properties
- An application was submitted to the TCEQ and was approved
- This action saved the citizens >\$1million as a result of not having to remediate the groundwater contamination
- Multiple potential redevelopers have indicated interest in the site

For additional information

 See the City of Lubbock Website at:

http://water.ci.lubbock.tx.us/MSD/allMSD.aspx

