



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>



TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Applicant Must Provide Notice

- To each municipality
- To owners of property within $\frac{1}{2}$ 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-of-way 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>

