

What is a Municipal Setting Designation ?

In 2003, the Texas Legislature passed a Municipal Setting Designation (MSD) statute which created a new alternative for persons addressing the groundwater contamination they were responsible for causing, as well as for persons who “volunteer” to address groundwater contamination.

An MSD is an official state designation given to property within a municipality or its extraterritorial jurisdiction which certifies that designated groundwater at the property is not used as potable water. Potable water is defined as water that is used for drinking, showering, bathing, cooking, or for irrigating crops intended for human consumption. Because that groundwater is contaminated in excess of the applicable potable-water protective concentration level, this law prohibits its future use as potable water. Through this locally-controlled program, the prohibition against using the designated groundwater must either be in the form of a city ordinance or as a restrictive covenant that is enforceable by the city and filed in the property records. This law also limits investigation and remediation requirements for contaminated groundwater on MSD properties. By offering this alternative to address the problem of contaminated groundwater that will not be used as potable water, persons may be more inclined to develop and redevelop properties in municipal areas that have contaminated groundwater.

Figure 1 illustrates an example MSD. The figure is a three-dimensional cross-section of the ground beneath property in a city. In the cross-section, three different groundwater zones are depicted. The box labeled “MSD Property” depicts the lateral and vertical boundaries of the MSD.

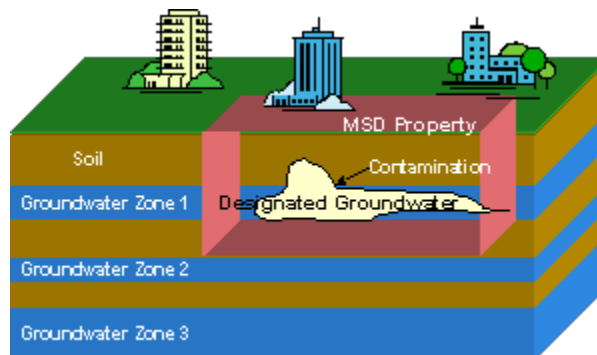


Figure 1. Three-dimensional cross-section of an MSD property and the designated groundwater zone

In this example, only Groundwater Zone 1 is contaminated. An MSD can only be applied to existing contaminated groundwater zones, not to clean or uncontaminated groundwater zones. Therefore, as indicated by the vertical boundary of the box, only Groundwater Zone 1 is included in the MSD. The portion of Groundwater Zone 1 within the MSD boundary is deemed the “designated groundwater” for the MSD and as such is **prohibited** from current and future use as potable water.

Groundwater Zones 2 and 3 are not contaminated, and therefore they are not eligible for inclusion in the MSD. In this example, only Groundwater Zone 1 within the boundary of the MSD is prohibited as a potable water supply. Landowners adjacent to the MSD may still drill potable water wells on their property, but unless there is a potable-water well within one-half mile of that MSD boundary, the groundwater contamination will not be investigated or remediated for potable-water use.

The Texas Commission on Environmental Quality's (TCEQ's) Remediation Division evaluates and determines whether groundwater contamination will spread and intercept a sensitive receptor. The MSD statute requires that TCEQ notify all registered water well owners within five miles of the proposed MSD boundary, and some municipalities have additional notification requirements. This notice provides these water well owners with an opportunity to comment on the proposed MSD designation.

In 2011, the Texas Legislature amended the MSD statute. The changes primarily affected entities that are within the City of Houston's city limits such that, if certain conditions are met, these entities would not be required to receive support from the local Retail Public Utility.

TCEQ has issued over 180 MSD Certificates, with all but a few being in or near the Dallas-Fort Worth or Houston metropolitan areas. For more information about MSDs, see:

- TCEQ Municipal Setting Designations webpage, <http://www.tceq.texas.gov/remediation/msd.html>
- TCEQ publication GI-326, "Municipal Setting Designations – A Guide for Cities", <http://www.tceq.texas.gov/publications/gi/gi-326.html>

For additional Frequently Asked Questions (FAQs) related to groundwater quantity, groundwater quality, septic systems, water wells, administrative entities, and publications, visit the Texas Groundwater Protection Committee's FAQ webpage at <http://tgpc.state.tx.us/frequently-asked-questions-faqs/>.