

MSDs Promotes Redevelopment of Contaminated Properties

Interview with Mike Frew with the TCEQ

By Scott Davis, GeoSearch, August 2009

The Texas Legislature authorized the creation of Municipal Setting Designations (MSD) in 2003; which would allocate an area where the use of contaminated groundwater is not allowed for use as potable water. The law is governed by Texas Commission of Environmental Quality (TCEQ) and the purpose of the legislation is to promote urban economic development in a manner that is protective of human health and the environment. It has stimulated much needed economic rejuvenation in many cities by encouraging new investment that promotes redevelopment, resulting in the creation of more jobs, higher property tax values, and a stronger urban economy. For property owners and developers, MSDs remove much of the hesitation connected with environmental contamination; by offering cheaper and faster cleanups, and greater certainty concerning the regulatory time frame and budget (Rogers, 2007). Since the beginning, the program has been adopted by several cities and many applications have successfully been completed. The interest of MSDs will likely continue to increase as long as environmental issues such as contamination liability and redevelopment remain in the commercial landscape for cities, property owners and developers.

Mike Frew and Scott Settemeyer with the Texas Commission on Environmental Quality (TCEQ) talk about what applicants should know about working with the MSD application process. It should also be mentioned that Mike has moved to the IT & Special Projects Team and is no longer with the MSD program. Scott Settemeyer has replaced Mike as MSD Coordinator.

- **Is the MSD program successful?** Yes, the program is very successful and growing. In fact, in the last 3 years we have been hitting 33 to 34 applications a year. Many of the cities that have adopted the program know what they are doing. It will become more popular as regulatory entities figure out that it is cheaper to get an MSD than to do some long term corrective action. As the program expands out to smaller towns, more education and guidance might be needed to educate those city officials.
- **Is it necessary to submit an updated water well report to the TCEQ after receiving approval from a municipality?** No, as long as the report is submitted in a reasonable time frame.
- **What is considered a reasonable time frame?** Within three years is probably fine; five years is probably too long
- **If a landowner is mistakenly reported to having a well, is it possible to remove their name from the list?** At the state, we have no way to remove landowner information from the state

records. It may be possible for the database company who provided the well information to remove it or make changes; however, it is important to remember that the well is registered with the state.

- **What if the water well could not be located, does it have to be considered?** Since the well is registered with the state it has to be considered.
- **What are some of the common problems you see with MSD applications?** The most common problems we see with applications relate to report format and the notification process. When a company submits an application and modifies the water well report to fit their format, it slows the process time by creating more questions. The process would be easier and quicker if they would submit the water well report in its original form from the database company. Other problems relate to notification. It is important to get a signed delivery receipt and to make sure the notification letter meet the statute requirements.
- **When do you need to seek a resolution of support from a Retail Public Utility (RPU)?** You need to seek a resolution of support from RPU's with a Certificates of Convenience and Necessity (CCN) and from Municipal Utility Districts (MUD's) that are created by legislation and have an elected board of directors. A mobile home park could be an example of an RPU that does not need a resolution of support and only needs to be notified.
- **Should local water wells be searched?** We require that state registered wells (TCEQ & TWDB) be searched; however, we won't turn down local sources. The applicant should check with the municipality where the proposed MSD is located and find out what wells they require to be searched.
- **Do you need to have resolution of support from Harris County Galveston Subsidence District (HCGSD)?** The statute is specific to the state, so you do not seek a resolution of support from HCGSD. However, the municipalities are not bound to the state and have their own requirements.
- **If a RPU does not have a well within 5 miles but provides service within the 5 mile radius of the applicant property, should it be considered?** You should only consider the RPU by the location of the water well and not service area.
- **Has the state considered other forms of notification other than mail, such as public meetings, listing in newspaper, etc.?** No, the state statute requires a signed notice from the well owner and a signed notice ensures that the individual well owner was contacted.
- **If a well is listed as inactive or plugged, do you have to notify them?** You do not have to notify a plugged water well, however, for inactive or not in use water wells the owners need to be notified.
- **Do you need a copy of a deed for the MSD property?** You do not need a legal description.



Source:

*Greg Rogers, John Slavich & David Whitten, Municipal Setting Designations Spur Urban Revitalization, July 2007, Law Firm of Guida, Slavich & Flores,
http://www.guidaslavichflores.com/publications/msd_spur_urban_revitalization.asp.*