



CITY OF HOUSTON

Department of Public Works and Engineering

Policy Statement

To: Michael S. Marcotte, P.E., D.WRE, BCEE,
Director

From: Carol Ellinger Haddock, P.E.
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Planning & Development Services Division

Mark L. Loethen, P.E.
Acting Deputy Director
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Date: March 9, 2010
Subject: MSD applications in areas where the city
does not currently supply drinking water
but is capable of supplying drinking water

Policy

State regulations and City ordinances do not require that all properties within one-half mile of an MSD applicant's property be supplied with drinking water from the City, only that the City is capable of supplying drinking water to the area. Supporting an application for a Municipal Setting Designation (MSD) does not imply or commit the City to providing drinking water to the non-served properties within one-half mile of the site as a result of supporting the application. In addition, the MSD applicant must demonstrate that the area of contamination does not and will not impact any nearby water well(s), otherwise the applicant is responsible for connecting the well owner(s) to the City drinking water system at the applicant's expense.

Concurrence:

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4/2/2010

Mark L. Loethen, P.E.
Acting Deputy Director
Planning & Development Services Division

Handwritten signature of Michael S. Marcotte in black ink.

Michael S. Marcotte, P.E., D.WRE, BCEE,
Director
Public Works & Engineering Department

Background

In 2003, the Texas Legislature authorized the creation of Municipal Setting Designations (MSDs), which is an official state designation given to property within a municipality or its extraterritorial jurisdiction that certifies that designated groundwater at the property is prohibited for use as drinking water. The law is administered by Texas Commission on Environmental Quality (TCEQ) and requires local city support to designate an MSD. The intent of the legislation is to encourage redevelopment of vacant or abandoned properties while protecting the public health, by providing a less expensive and faster alternative to the existing state environmental regulations governing the investigation and cleanup of contaminated groundwater. On August 22, 2007, City Council approved an Ordinance amending Chapter 47 of the Code of Ordinances by adding Article XIII "Municipal Setting Designations" relating to groundwater, which provides a process to support or not support a MSD application to the State.

Opportunity

It is anticipated that MSD applications will be submitted where all properties within one-half mile of the proposed MSD boundary are not currently supplied with City drinking water but the City is capable of supplying drinking water in the area. The applicant must technically demonstrate that the area of contamination does not and will not impact any well(s) within one-half mile of the MSD boundary or the applicant is responsible for connecting the well owner(s) to the City drinking water system at the applicant's expense. Supporting MSD applications encourage redevelopment of vacant or abandoned properties and make timely completion of cleanup action achievable while still protecting public health.

Requirements

The TCEQ requires an MSD applicant to be located within the corporate limits or extraterritorial jurisdiction of a municipality that supplies or is capable of supplying drinking water to the applicant's property and properties within ½ mile of the applicant's property (§ 361.803¹). TCEQ does not require the municipality to supply drinking water to the area only that the municipality has the capacity to supply drinking water to the area. Also, Chapter 47 Section 765² of the City's Code of Ordinances only requires that a public drinking water supply system supply or is capable of supplying drinking water to the designated property and property within ½ mile of the proposed MSD boundary.

In addition, the TCEQ has established requirements (§ 361.808³) for the applicant if there are drinking water wells within ½ mile of the proposed MSD boundary. The applicant must determine if groundwater contamination on the site has caused or is likely to cause human health or ecological standards to be exceeded in the area located within ½ mile beyond the MSD boundary. If the investigation shows that the groundwater has not impacted any receptors in the area then the executive director will approve the MSD application. However if the investigation shows that the groundwater contamination has caused human health or ecological standards to be exceeded then the executive director will require the applicant to complete mandatory groundwater response actions including providing owners of impacted potable water wells a reliable alternate water supply. This puts the responsibility of connecting an impacted well owner to the City's potable water system firmly onto the applicant.

Conclusions

TCEQ does not require a municipality to supply drinking water to an MSD applicant's property and the properties within ½ mile of a proposed boundary, only that the municipality has the capacity to supply drinking water to the area.

While there is no regulation or ordinance that prevents the City from supporting an MSD application in an area where some of the surrounding properties are not supplied with drinking water from the City, PWE staff will evaluate support for these application on a site by site basis.

TCEQ requires the MSD applicant to determine if groundwater contamination from the applicant's property has or is likely to exceed human health or ecological standards. If the standards are exceeded the applicant will have to complete groundwater response actions to reduce the human health or ecological risks. These actions include providing owners of impacted potable water wells a reliable alternate water supply.

Regulations and Ordinances

¹ § 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION.

A person, including a local government, may submit a request to the executive director for a municipal setting designation for property if:

- (1) the property is within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute that has a population of at least 20,000; and
- (2) a public drinking water supply system exists that satisfies the requirements of Chapter 341 and that supplies or is capable of supplying drinking water to:
 - (A) the property for which designation is sought; and
 - (B) property within one-half mile of the property for which designation is sought.

² Sec. 47-765. City council public hearing.

(e) The city council shall deny the application if it finds that:

- (1) It does not meet the eligibility criteria of section 361.803 of the Texas Health and Safety Code;
- (2) The municipal setting designation will have an adverse effect on the current or future water resource needs or obligations of the city; or

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- (3) There is not a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of the boundary of the designated property.

³ § 361.808. INVESTIGATION AND RESPONSE ACTION REQUIREMENTS.

- (a) If no potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall not require a person addressing environmental impacts for a property located in the municipal setting designation to:
 - (1) investigate the nature and extent of contamination in groundwater except to satisfy the requirements of Subsection (b); or
 - (2) conduct response actions to remove, decontaminate, or control environmental impacts to groundwater based solely on potential potable water use.
- (b) Notwithstanding Subsection (a), the executive director shall require a responsible person to complete a response action to address environmental impacts to groundwater in a certified municipal setting designation if action is necessary to ensure:
 - (1) the protection of humans from exposures to environmental impacts to groundwater that are not related to a potable water use, including exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater; or
 - (2) the protection of ecological resources.
- (c) If potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall require a person addressing environmental impacts for a property located in the municipal setting designation to complete an investigation to determine whether groundwater contamination emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation.
- (d) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has not caused and is not reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response actions at the property except to the extent that response actions are necessary to satisfy Subsection (b).
- (e) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response action at the source property if the person addressing environmental impacts:
 - (1) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater to meet applicable human health or ecological standards; or
 - (2) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater that are not related to a potable water use, including actions to protect humans from exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater and actions to protect ecological resources, and:
 - (A) provides to owners of impacted potable water wells described in Subsection (c) a reliable alternate water supply that will provide a volume of water sufficient for the intended use for a period not shorter than the period that the impacted wells exceed the human health or ecological standards and, after obtaining permission from such owners, files a restrictive covenant that prohibits the use of groundwater from those wells as potable water and restricts other uses of groundwater in a manner consistent with groundwater quality; or
 - (B) expands the municipal setting designation in accordance with the procedures under this subchapter relating to the initial application for a municipal setting designation to include the properties with impacted potable water wells described in Subsection (c).
- (f) Notwithstanding any other provision of this section, the executive director may require a person responsible for property within a certified municipal setting designation to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in an area located more than one-half mile beyond the boundary of the certified municipal setting designation, provided such action is necessary to ensure:
 - (1) the protection of humans from exposures to environmental impacts to groundwater; or
 - (2) the protection of ecological resources.
- (g) This subchapter relates to the scope of the response action that can be required by the executive director in municipal settings designated under this subchapter. Nothing in this subchapter shall be construed to alter or affect the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants. Nothing in this subchapter is meant to alter or supersede any requirement of a federally authorized environmental program administered by the State of Texas.