

MSD Webinar Follow up Questions & Answers

Questions were asked after the webinar by participants and answered by Scott Settemeyer of the TCEQ.

Q. I would like to know more about how the city or the TCEQ handles a ground water plume that extends offsite onto adjacent property (if that property is not included in MSD). If that portion of plume is not in an MSD property, does the ground water ingestion have to be addressed? How? Get restrictive covenant on that property?

A. The TCEQ has approved MSDs with groundwater contamination that extends beyond the MSD boundary. Texas Health and Safety Code §361.808(a) states that the TCEQ cannot compel a person to assess or remediate groundwater contamination based solely on potable use. Therefore, the portion of a groundwater plume outside of the MSD boundary is evaluated the same as the portion of the plume within the MSD boundary.

Q. How can MSD use be perceived by applicants as the end all process with no future liability? I have seen several LPST sites close with significant soil impact, where houses or apartments were built and the TCEQ was not notified about a land use change that could affect the closure. Land will change and the MSD should be monitored by the cities and the owners need to realize that adjacent liability is not forgiven.

A. The MSD Certificate in and of itself does not provide site closure. Responsible parties for contaminated sites that obtain an MSD Certificate must still evaluate all applicable exposure pathways and complete any necessary non-potable response actions. All pertinent TCEQ reports must be submitted and receive approval in order to obtain site closure.

It is also important to understand that the issuance of an MSD Certificate is independent of the land use selected for site closure. Remediation sites that obtain an MSD Certificate may close under residential or commercial/industrial land use. If a person intends to change the land use of a property from commercial/industrial to residential, then the person must take any actions necessary to make the property protective for such changed conditions and notify the TCEQ at least 60 days prior to changing the land use.

Q. Could you discuss the elimination of the population requirements and resolutions of support from adjacent municipalities?

A. In 2007, House Bill 2018 of the 80th Legislature removed the provision in the MSD statute that required the MSD property be located in a municipality with a population of at least 20,000.

There have been no changes made to the statute that would eliminate the requirement for adjacent municipalities to provide a resolution of support. In 2009, Senate Bill 1748 of the 81st

Legislature proposed revisions to Texas Health and Safety Code §361.8065 which would have required persons to provide documentation that no resolution opposing the application has been adopted by any municipality or retail public utility. This bill was not adopted. Later in 2009, Senate Bill 1449 of the 81st Legislature initially proposed to eliminate the provision under Texas Health and Safety Code §361.8065(a)(1)(B) that requires the person to obtain a resolution of support from the governing body of each retail public utility. However, this provision of the bill did not make it into the enrolled version.

Q. Is the MSD available for Superfund sites?

A. Superfund sites are not prohibited from obtaining an MSD. However, the TCEQ is not currently using MSDs on State Lead Superfund sites. The TCEQ recommends that persons talk to the EPA on EPA Lead Superfund sites to determine what benefit, if any, that an MSD would provide.

Q. I would like to hear more discussion, and a plan to resolve, the issues associated with incorrect databases on water wells. The State needs to get this under control and be sure we are capturing the new information that is developed during these grueling MSD notification processes.

A. The TCEQ understands your concerns regarding the incomplete and sometimes inaccurate information contained in the water well databases. However, at this time the TCEQ does not have the resources to resolve this issue.

Q. If I have a site with a ground water plume on my client's (non-RCRA) site and half on a RCRA site, can my client get an MSD that covers the whole plume?

A. This is not a situation that the TCEQ has contemplated. The TCEQ will have to evaluate this situation.

Q. How should we organize the copies of the gazillion delivery confirmations and returned envelopes to make the TCEQ's review process easier? Specific information on the preferred organization would be great.

A. In order for the TCEQ to provide expeditious review of MSD Applications, it is preferred that the return receipts/delivery confirmations be organized in a logical manner so that correlation to the well owners on the table in Section 9 can be accomplished quickly. Examples would include: Organize the return receipts/delivery confirmations in the same order as the well owners in the table in Section 9; include a cross-reference on the table of well owners in Section 9 that identifies the page number in Section 10 that the return receipt/delivery confirmation can be found; and/or organize the table in



Section 9 by well ID number and then include a cross-reference on the return receipt/delivery confirmation that identifies the well ID number. Bottom Line: The more disorganized the return receipts and delivery confirmations are, the longer it will take for the TCEQ to review and/or approve the MSD.