

HEALTH & SAFETY CODE

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 361. SOLID WASTE DISPOSAL ACT

SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

§ 361.801. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

- (A) solid waste;
- (B) hazardous waste;
- (C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;
- (D) a pollutant as defined in Section 26.001, Water Code;

and

(E) a hazardous substance:

- (i) as defined in Section 361.003; or
- (ii) subject to Subchapter G, Chapter 26, Water Code.

(2) "Potable water" means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal from the environment of a hazardous substance or contaminant, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.8015. LEGISLATIVE FINDINGS. (a) The legislature finds that access to and the use of groundwater may need to be restricted to protect public health and welfare where the quality of groundwater presents an actual or potential threat to human health.

(b) The legislature finds that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a municipal setting designation advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.802. PURPOSE. The purpose of this subchapter is to provide authorization to the executive director to certify municipal setting designations for municipal properties in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 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.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.804. APPLICATION FOR A MUNICIPAL SETTING DESIGNATION.

(a) A person seeking to obtain a municipal setting designation under this subchapter must submit an application to the executive director as prescribed by this section.

(b) An application submitted under this section must:

- (1) be on a form provided by the executive director;
- (2) contain the following:
 - (A) the applicant's name and address;
 - (B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the ordinance or restrictive covenant described by Section 361.8065(a)(2);
 - (C) a statement as to whether the municipalities or the retail public utilities entitled to notice under Section 361.805 support the proposed designation;
 - (D) an affidavit that affirmatively states that:
 - (i) the municipal setting designation eligibility criteria contained in Section 361.803 are satisfied;
 - (ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been satisfied are included with the application;

(iii) a true and accurate copy of a legal description of the property for which the municipal setting designation is sought is included with the application; and

(iv) notice was provided in accordance with Section 361.805;

(E) a statement regarding the type of known contamination in the groundwater beneath the property proposed for a municipal setting designation;

(F) proof of notice, as required by Section 361.805(c); and

(G) if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065, or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065 before the executive director certifies the municipal setting designation in accordance with Section 361.807; and

(3) be accompanied by an application fee of \$1,000.

(c) Not later than 90 days after receiving an application submitted as provided by Subsection (b), the executive director shall:

(1) issue a municipal setting designation certificate in accordance with Section 361.807;

(2) deny the application in accordance with Section 361.806; or

(3) request additional information for the municipal setting designation application.

(d) Not later than the 45th day after the date the executive director receives any additional information requested under Subsection (c)(3), the executive director shall certify or deny the application.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.805. NOTICE. (a) On or before the date of submission of an application to the executive director, a person seeking a municipal setting designation must provide notice to:

(1) each municipality:

(A) in which the property for which the designation is sought is located;

(B) with a boundary located not more than one-half mile from the property for which the designation is sought; or

(C) that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought;

(2) each owner of a private water well registered with the commission that is located not more than five miles from a boundary of the property for which the designation is sought; and

(3) each retail public utility, as defined by Section 13.002, Water Code, that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought.

(b) The notice must include, at a minimum:

(1) the purpose of the municipal setting designation;

(2) the eligibility criteria for a municipal setting designation;

(3) the location and description of the property for which the designation is sought;

(4) a statement that a municipality described by Subsection (a)(1) or retail public utility described by Subsection (a)(3) may provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) a statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) the type of contamination on the property for which the designation is sought; and

(7) identification of the party responsible for the contamination of the property, if known.

(c) The applicant must submit copies of the notice letters delivered in accordance with Subsection (a) and the signed delivery receipts to the executive director with the application.

(d) For the purpose of this section, notice to a municipality must be provided to the city secretary for the municipality and notice to a retail public utility must be to the registered agent, the owner, or the manager.

(e) A municipality, retail public utility, or private well owner entitled to notice under this section may file comments with the executive director not later than the 60th day after the date the municipality, retail public utility, or private well owner receives the notice under this section.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.806. DENIAL OF APPLICATION. (a) The executive director shall deny an application submitted under Section 361.804 if:

(1) any of the eligibility criteria described in Section 361.803 have not been met for the property for which the municipal setting designation is sought;

(2) the application is incomplete or inaccurate; or

(3) after the 60-day comment period described by Section 361.805(e), the executive director determines that the municipal setting designation would negatively impact the current and future regional water resource needs or obligations of a municipality, a retail public utility, or a private well owner described by Section 361.805(a).

(b) If the executive director determines that an application is incomplete or inaccurate, the executive director, not later than the 90th day after receipt of the

application, shall provide the applicant with a list of all information needed to make the application complete or accurate.

(c) If the executive director denies the application, the executive director shall:

- (1) notify the applicant that the application has been denied; and
- (2) explain the reasons for the denial of the application.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Before the executive director may issue a municipal setting designation certificate under Section 361.807, the applicant must provide documentation of the following:

- (1) that the application is supported by a resolution adopted by:
 - (A) the city council of each municipality described by Section 361.805(a)(1)(B) or (C); and
 - (B) the governing body of each retail public utility described by Section 361.805(a)(3); and
- (2) that the property for which designation is sought is:
 - (A) subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or
 - (B) subject to a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(b) A designation described by Subsection (a)(2)(B) must be supported by a resolution passed by the city council of the municipality.

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 361.807. CERTIFICATION. (a) If the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, the executive director shall issue a copy of the municipal setting designation certificate to:

- (1) the applicant for the municipal setting designation;
- (2) each municipality, retail public utility, and private well owner described by Section 361.805(a); and
- (3) each person who submitted comments on the application for the municipal setting designation and anyone else who requested a copy during the review period.

(b) The municipal setting designation certificate shall:

- (1) indicate that the municipal setting designation eligibility criteria described in Section 361.803 are satisfied and that the executive director has certified the municipal setting designation;
- (2) indicate that any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any

necessary investigation and response action requirements in accordance with Section 361.808; and

(3) include a legal description of the outer boundaries of the municipal setting designation.

(c) If the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065 have not been submitted, the executive director shall issue a letter to the applicant listed in Subsection (a) stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065. On submission of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065, the executive director shall issue a municipal setting designation certificate in accordance with Subsections (a) and (b).

Acts 2003, 78th Leg., ch. 731, § 1, eff. Sept. 1, 2003.

§ 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.