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by *Richard Bost, P.G., P.E., CGWP Principal*  
*Environmental Resources Management (ERM)*

## WHAT IS MSD?

There are many areas in the state that have widespread, contaminated, shallow ground water. This ground water is not being used as potable water by anyone and the costs of cleaning it to unnecessarily high standards often exceeds the cost of the land. Consequently, the Texas Legislature passed House Bill 3152 in order to establish certain areas as Municipal Setting Designations (MSDs).

Over the years, the ground water at and downgradient of numerous properties in Texas has been affected by releases of hazardous substances. Expensive investigations and cleanup are not always effective. In nearly all cases, affected shallow ground water does not pose health risks unless ground water is used for potable purposes. House Bill 3152 allows the establishment of Municipal Setting Designations (MSDs), which excuses parties from investigation and cleanup requirements for shallow ground water plumes in urban areas where alternate water sources are available.

The Bill was endorsed by the cities of Dallas, Houston and San Antonio, as well as the Texas Municipal League. It was supported by the Texas Commission on Environmental Quality (TCEQ), and received EPA's approval. House Bill 3152 will promote business, reduce TCEQ's site backlog and will promote economic development.

Responsible parties in an area with a MSD certificate will be able to amend their ground water remediation efforts as follows. Proposed MSDs must meet the following requirements to receive a MSD certificate from the Texas Commission on Environmental Quality (TCEQ):

- The proposed MSD must be within the limits or jurisdiction of a city with a population of at least 20,000.
- A public drinking water supply must be available to the proposed MSD and the property within one-half mile of the MSD.

- A notice explaining the proposed MSD must be sent to each city within one-half mile, each private registered well owner within five miles, and each public utility operating a ground water supply well within five miles of the MSD before the application is submitted.

*The establishment of Municipal Setting Designations (MSDs) excuses parties from investigation and cleanup requirements for shallow ground water plumes in urban areas where alternate water sources are available*

- Each city and public utility the proposed MSD affects must support the MSD and pass enforceable ordinances that prohibit the use of the designated ground water in the MSD.

For a fee of \$1000 anyone can submit an application for a MSD to the executive director of the TCEQ. Once all of the requirements have been met and the executive director determines that the proposed MSD will not negatively affect a regional water supply now or in the future, the TCEQ may issue a MSD certificate.

The TCEQ may require the applicant to:

- Determine whether or not humans or ecological resources are negatively impacted in areas where there are no potable water wells within one-half mile of the MSD. No further investigation or corrective action will be required if the investigation reveals no adverse affects.
- Take corrective action in situations where contact with ground water could cause harm.
- If potable wells are located within one-half mile of the MSD, determine if human health and ecological standards are exceeded within the area one half mile from the MSD. No further investigation or corrective action will be required if the standards are not exceeded.
- Corrective action must be taken if the standards are exceeded within the one-half mile area.
- If ground water remediation is conducted within the one-half mile area to meet the requirements of the MSD, a reliable alternative water supply must be provided to the owners of the impacted potable wells (given

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their permission) during the time that the standards are exceeded, and the MSD must be expanded to include the properties with the impacted potable water wells.

While obtaining a MSD certificate may reduce the amount of ground water remediation required for a certain area, the certificate does not prevent others from claiming personal injury or property damage caused by ground water contamination. ■

### Biographical Sketch

RICHARD BOST, a professional engineer and professional geoscientist, has been a partner with Environmental Resources Management (ERM) for 15 years. Mr. Bost has over twenty five years of experience providing spill emergency response, risk-based remediation and related spill response legal support consulting services to the petrochemical, transportation and oil and gas industry.

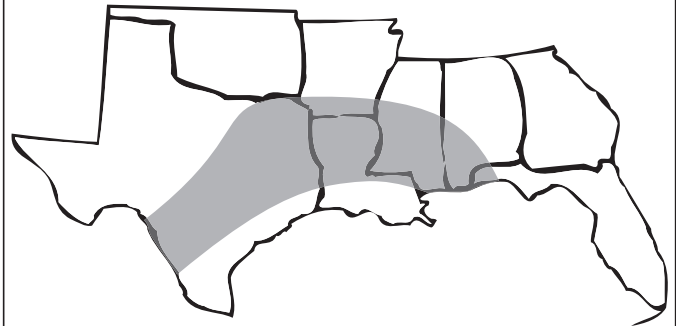


He is considered an expert in remediating chlorinated solvent plumes and in environmental forensics. He has provided expert consulting services regarding state-of-the-art site investigation and remediation technologies and has been teaching short courses and seminars on the subject in the Houston area since 1987.

Prior to joining ERM in 1984, he served as operations trouble-shooter for the Strategic Petroleum Reserve and served as an assessment specialist for historical affects from oil and gas activities, oil and gas and waste injection well operations, cavern leaching and transfer operations, and for closure for old oil and gas facilities. He subsequently worked primarily dealing with Superfund sites and multi-aquifer RCRA remediation projects and facilitated the patenting of bioremediation techniques and EPA approval of the first natural attenuation remedies in Region 6. He graduated from Rice University in 1978 with a Masters Degree in Water Resources Management that included a concentration of courses in public health. Prior to that he worked at the Texas Air Control Board, performing air quality studies and developing regional air quality models. Accordingly, he has testified as a comparative risk expert and remediation expert in several cases and contributed to the successful overturn of EPA remedy selection for two different Superfund Sites. In recognition of his contributions to the field of environmental engineering and assistance with several Brownfield projects, Rice University recognized Mr. Bost as the outstanding engineer alumnus for the year 2002. He previously was appointed by Governor of Texas to Task Force 21, an advisory group to the predecessor to the TCEQ and has served on several water quality advisory committees. He also participated in the initial development of the Texas Risk Reduction Rules and provided input on the development of the MSD rules.

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