

STATUTORY NOTIFICATION REQUIREMENTS

Section 361.805 of the Texas Health and Safety Code (THSC) requires the applicant to provide a letter to notify the parties identified below that an MSD application is to be submitted to the TCEQ. The notice must be completed in advance of or at the same time an application is submitted to the TCEQ.

Who to Notice?

Specifically, the notice letter must be provided to:

- Each municipality:
 - In which the MSD property is located;
 - With a boundary located within one-half mile from the MSD property boundary; or
 - That owns or operates a groundwater supply well located within five miles from the MSD property boundary;
- Each owner of a “private water well registered with the commission”¹ that is located within five miles from the MSD property boundary; AND
- Each retail public utility² that owns or operates a groundwater supply well located within five miles of the MSD property boundary.

What to Include in Notice?

The applicant is required in the notice letter to include the information listed in Section 361.805(b) of the Texas Health and Safety Code. Include a statement that the notified party has up to 60 days after they receive the notice letter to file comments with the TCEQ, if they choose to do so. The TCEQ recommends that the letter include contact information for the MSD program at the TCEQ Remediation Division.

The TCEQ cannot take action to deny or certify the application until 60 days after those notices are received.

How to Notice?

Section 361.804 of the THSC requires the MSD applicant to provide proof of notice in the MSD application. Section 261.805(c) of the THSC requires the applicant to submit copies of the notice letters and the signed receipts with the application. To save paper, the TCEQ allows the applicant to provide a notarized statement that each letter was identical except for the addressee contact information, and then one sample letter can be provided in lieu of providing a copy of each letter. By practice,

¹ Statutory language that means the TCEQ, but also must include the Texas Water Development Board and the Texas Department of Licensing and Regulation.

² Retail public utility as defined by Texas Water Code §13.002.

the TCEQ has established a norm that a minimum of three attempts must be made by the applicant to complete notice, of which two attempts involve obtaining a signed receipt from the notified party. If the first notification letter is returned undeliverable, at a minimum check the local school and county tax district records for current property ownership and resend the notice. Internet searches may be helpful for company addresses.

An established acceptable notification process is:

1. First attempt, US Postal Service (USPS) Certified Mail, Return Receipt Requested
2. Second attempt, USPS Certified Mail, Return Receipt Requested
3. Third attempt, USPS Delivery Confirmation Service (may be performed in conjunction with the second notification attempt.) With this service, the applicant can download USPS electronic verification of the date and time delivery occurred.

Other methods, such as hand delivery is also acceptable notification as long as it is documented by signed receipt.