



Orientation to Environmental Enforcement

Online Class TIDRC000

Companion website: <http://www.tidrc.com/>

Approved by Texas Department of Licensing and Regulation
One (1) Continuing Education Unit

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Orientation to Local Environmental Enforcement

TIDRC000 - 1 CEU

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Purpose

The purpose of this class is to provide an overview of the options that local governments have in doing anti-pollution enforcement.

Most code enforcement and law enforcement officers are under-educated on this subject, as are prosecutors and other local officials.

Anti-pollution education for the professionals in cities and counties has missed a lot of people; it is not covered in any entry-level professional education class I have ever encountered. Correct information can be hard to come by.

Code enforcement officer training does not include focus on the criminal laws that a community might use to control pollution in addition to codes. Others are left out too:

- As mentioned, **Code officers** don't learn the criminal anti-pollution laws in their schools;
- **Police** typically don't know local anti-pollution municipal codes, nor do they know the anti-pollution criminal laws and how they can be enforced, which is a police responsibility. Although these criminal laws are found in the same set of laws as criminal drug laws, they are simply not addressed in police academies;
- **Sheriff deputies** and **constables** don't study these laws in the same training academies either. So this is a problem facing both city *and* county officers;
- **Fire Marshals** who are sworn law enforcement officers can also enforce criminal environmental laws, and many are doing so. More of these folks need to be trained;
- **Local Health Authorities** are usually unaware of their responsibilities to respond to Public Health Nuisances, as mandated in these laws (see THSC Sec. 341.012). Local Health Departments invariably only partially follow the same state law, to the detriment of the community;

- **City attorneys** and **prosecutors** don't study Texas criminal environmental laws in law school either, so the first case that local law enforcement presents for prosecution may be the first time prosecutors have seen a particular criminal law cited;
- **Other elected officials** face the same situation. **Commissioners** and **city council members** may have been elected specifically to reduce illegal dumping in their district, only to find that they do not actually know their options. Likewise, law enforcement and code enforcement **management** are in the same boat, as are **city staff with special responsibilities** such as **community development** and responding to substandard structures.

As far as knowing the options for environmental enforcement, it's pretty well the case that ignorance abounds, and poor knowledge = poor enforcement.

But if a code enforcement officer cannot personally enforce state criminal environmental laws, why should he or she know them anyway? There are a couple of answers to this:

- (1) A great deal of the illegal dumping code officers see in the neighborhoods is actually waste dumped ON the community by outside small businesses and individuals (trying to use municipal codes to respond to dumping ON the neighborhood will always be inadequate). Code officers need to know when they see a crime taking place; and,
- (2) Code officers know just about every place in their community. As a group, they have been down every street and alley in town and know what's happening just about everywhere. Of all city officials, code enforcement officers are the ones who see the most. Consequently they are in a great position to observe the effects of illegal dumping and other environmental crimes AND to report these violations to police for law enforcement response. Code enforcement officers are the eyes of the city.

The purpose of this series of TIDRC classes is to try to cure our collective ignorance. Beginning with this class you can go deeper and deeper into the laws and their application to respond to pollution in cities and counties. Subsequent classes in this series cover: dealing with Public HEALTH Nuisances and rural Public Nuisances; illegal dumping, both done casually and commercially; scrap tire dumping; illegal outdoor burning; ethics of enforcement; oil and gas waste; and so on. You can find these classes listed on the home page at <http://tidrc.com/>.

Environmental Enforcement Is a (Local) Team Sport

Harsh Reality #1: No state agency is going to keep your community clean for you.

The state environmental agency ... the Texas Commission on Environmental Quality ... is NOT going to come clean-up your community. That's a job for local government, whether it is done or not. The folks at the TCEQ have their hands full, so you will find that most Texas neighborhoods and communities are free to stay as clean or as filthy as residents and officials want.

According to a June 2022 article in the Texas Tribune (<https://tinyurl.com/2p82p4tb>):

A report from the state Sunset Advisory Commission found that Texas Commission on Environmental Quality commissioners have become “reluctant” regulators and often encourage industry to “self police.”

Most of us with friends in the TCEQ know of the internal frustrations behind this story. To some degree this is a matter of serious underfunding. Texas was second only to Wisconsin in decreases to state environmental regulator budgets in recent years; we are in the lowest quarter of states as far as paying for environmental protection is concerned. It is simply not a priority for our current state government. That fact alone puts enormous pressure on local communities to enforce anti-pollution laws as aggressively as they can, if in fact they want to stay clean and healthy.

Also, Texas is a massive, spread-out place with lots going on: 9.4% of the landmass of the “Lower 48” states; 254 counties; over 1,200 cities; and, over 3,300 special government districts, many with some level of enforcement power. The five counties at the top of the Texas Panhandle ... Dallam, Sherman, Hansford, Ochiltree, and Lipscomb ... are closer to the capitols of five states *other than* Austin.

Even with 16 regional offices, there's just no way for the TCEQ to be everywhere in the state when it's needed.

Moreover, consider what state and federal laws require the TCEQ to oversee. Take a look at the TCEQ's Central Registry of regulated entities at <https://tinyurl.com/454wtkk2>. Here's what I found when I did so about a year ago:

- The Central Registry, in June 2021, contained information on **878,870 entities**;
- Of these, **384,365 had a status of “Active,”** which was 44% of the entire data base; however, some of the other 495,000 can constitute a demand on staff time in unusual circumstances;

- These cover **73 unique programs** to be regulated, including such things as *stormwater* (33,466 active entities); *petroleum storage tanks* (31,303); *air new source permits* (101,461); and, seventy others;
- Taking care of all of these are around **2,800 TCEQ employees**. Salaries are not high in state government, and in some cases the number of highly trained technical specialists required to regulate a particular industry is simply insufficient. Many times a regulator may make the jump to working for a regulated industry that values his or her knowledge more highly. With due regard for the findings of the Sunset Advisory Commission, sometimes encouraging industry to “self-regulate” is the only rational approach.

Consequently, local governments have to take the lead on most local pollution cases, simply because they are closer to the problems and usually have more available resources. This is certainly true when it comes to illegal dumping enforcement.

Another factor to consider in dumping enforcement is that in January of 1996, the Texas Natural Resource Conservation Commission (TCEQ’s old name) failed to be awarded some funding for solid waste issues and, reflecting TNRCC staff realignment, sent every County Judge in Texas a letter that, for the most part, they were expected to handle illegal dumping as a local issue. This is still state policy: Dumping is “officially” the enforcement problem of local governments, in all but a few narrow cases, and has been for years.

So rather than continue to expect the badly overworked staff at the TCEQ to respond to this particular problem in your community, which is not even state policy, frankly ask yourself if your city or county is itself doing everything it can to deal with this problem. In most cases, the answer is, “No.”

Harsh Reality #2: You’ll not get far without law enforcement involvement.

This applies to Texas cities and counties of all sizes: Unless law enforcement gets involved in responding to illegal dumping and other local crimes of pollution, your city or county management actually has made the decision for your place to not be as clean as it could be, regardless of lofty words to the contrary.

Consider this illustration within a city:

“Thanks for calling, but we don’t do code enforcement.”

A code enforcement officer was working with a resident concerning several complaints that neighbors have made about the high weeds on their property. As she was leaving this call, the officer notices a vacant lot on the same street that is being used as a dump site. The waste she sees includes 20 or 30 used passenger tires, several old water heaters, and lots of what looks like construction debris, like scrap lumber and a piles of busted bricks. There are what looks like a few bags of household trash thrown there too.

She asks a neighbor about what’s going on and is told that the lot is owned by a man who used to live in the vacant house next to it, but that he had died a couple of years before. She says that shortly after he died different trucks started coming by from time to time to dump things. A few neighborhood folks had started throwing their bags of household trash there too. The place was starting to look pretty nasty, and mosquitoes and rats were starting to be a problem.

The officer realizes that this would be a very difficult situation to respond to using municipal codes. The owner of the lot has passed away and there was not yet a new owner that she might work with or cite to get the place cleaned. The city had no budget to clean places like this using taxpayer funds. It looked to her like a mix of *commercial* and *residential* dumping that was becoming more common in this part of the city.

More importantly, she realizes from her training that what she is seeing is, for the most part, evidence of commercial criminal illegal dumping. She also knows that the each of the parties who dumped the different piles probably has committed one or more State Jail Felonies.

For an individual the fine for dumping can be as high as \$10,000 and/or include confinement of six months to two years. Moreover, if the dumping was done by a non-individual ... such as a tire store, appliance installer, or builder as a matter of business practice ... the fine could be as high as \$40,000 per violation (\$20,000 for the actual dumping and another \$20,000 for hauling the waste there to be dumped).

Realizing that she was standing at an active crime scene, she called her Police Department to report what she was seeing.

However, this is the point when things began to go wrong. The officer she spoke with told her, “Thanks for calling, but we don’t do code enforcement.” She responded, “Yes, I’m aware of that, I do code enforcement; but y’all respond to

crimes, right? I'm reporting what appears to be a series of felonies. Could y'all please respond?" Still receiving the wrong answer, she finally asked, "Well, do you have the number of the folks in the city who DO respond to the felonies that y'all ignore? I need to get in touch with them."

This is a common situation that many (but certainly not all) code officers in Texas encounter every day: They recognize the crime but have no criminal enforcement power. The organization the city that can respond refuses to do so ... for a variety of reasons. Rather than push for more effective enforcement that can help the community, too many times city employees just ignore the problem.

On the other hand, a growing number of counties and farsighted cities have specially trained law enforcement officers that focus on environmental crime, with Houston PD's Environmental Investigations section in their Major Offenders Division being the first dedicated unit in the state.

Just about all members of local governments have a role to play in stopping pollution in Texas cities and counties. These include, in addition to municipal code enforcement officers in most cities, such entities as: county commissioners and city council persons (who fund local enforcement programs); district and county prosecutors; city attorneys; emergency management directors; fire marshals; Local Health Authorities (with or without there being a formally organized Local Health Department); police, deputies, constables and other local law enforcement officers; city and county staff and departmental management, including community development officers; and so on.

Categories of Environmental Laws and Regulations in Texas

Another way to understand what's available for use is to take a look at the various categories of pollution-controlling regulations and laws in Texas and who is authorized to enforce them, presented in an outline form:

Who can enforce Texas anti-pollution laws

Dealing with pollution is, for the most part, a local problem in Texas. The state is simply too large and diverse for a state-based solution to be particularly effective. Many times an effective enforcement partnership can be created between the Texas Commission on Environmental Quality (generally enforcing state administrative law) and local government (who provides the criminal and health authority response).

A. State Level Enforcement

1. TCEQ Administrative Enforcement

Only state agencies, such as the TCEQ, can do this.

Most state-level anti-pollution enforcement is handled through the use of **Administrative Law**, especially that found in Title 30, Environmental Quality of the Texas Administrative Code. Virtually all environmental investigations and enforcement undertaken by the TCEQ is based on this administrative law, the sections of which appear as individual "Rules" on the TCEQ website. The way administrative enforcement works is detailed in *THSC Chapter 7 Enforcement, Subchapter C, Administrative Penalties of the Texas Water Code (Sections 7.051 through 7.075)*.

The TCEQ is a very busy agency. In FY 2017 (an average pre-COVID year), they reported conducting 104,146 investigations, of which 62,954 took place on-site (the balance being mostly paperwork reviews). Virtually all of these 104,146 investigations were undertaken by the agency in its own normal activities in monitoring the regulated entities in Texas.

But the agency responds to complaints too. In FY 2017 as part of the 104,146 total investigations, in 4,963 cases the agency was responding to a complaint from the public. (Compare these levels of activities with the 375,000 municipal code cases that local cities processed through Texas municipal courts [about 6% of all municipal court cases] and the literally millions of municipal code enforcement cases handled long before they reach the level of needing a municipal judge to get involved.)

For the last twenty-five years, the policy of the TCEQ has been that most illegal dumping cases are to be handled by the county or city where the dumping took place.

Although cities and counties cannot directly enforce Administrative Law, many times cities have adopted major parts of these rules as their own local municipal codes. These are enforced directly. In some cases, such as the Administrative Rule governing scrap tire management, cities can adopt municipal codes that are significantly stronger than the administrative rules. Over twenty cities in Texas have done so and now enforce their own Scrap Tire Ordinances.

2. State Criminal Enforcement

Two state agencies are staffed to respond to major criminal cases.

a. TPWD Environmental Crimes Unit (6-8 officers)

In addition to its game wardens and park police officers (currently numbering around 550 and 180 statewide, respectively), Texas Parks & Wildlife has a small group of officers (six sergeant level game wardens and a captain) who handle complex environmental criminal cases statewide.

b. TCEQ Environmental Crimes Unit (10-12 investigators)

In addition to the other employees in the agency working on administrative enforcement, the TCEQ maintains a small group of environmental investigators (currently 12 investigators, two specialized criminal environmental attorneys, and an investigator-manager). These investigators (i.e., are not sworn peace officers) respond to the most complex environmental cases in the state. Cases developed by both the TPWD Environmental Crimes Unit and this TCEQ ECU usually are filed in Travis County, where the District and County Attorneys maintain highly competent prosecutors. In some situations, the cases are processed through courts in counties where the violation takes place or where the violator lives.

The combined force of TPWD and TCEQ Environmental Crimes Units is about twenty people. Clearly local governments will be doing the bulk of the enforcement work, if anyone does.

c. The Railroad Commission of Texas

The RRC currently has no criminal enforcement process; their enforcement is based on administrative law. Criminal statutes involving oil and gas waste will be enforced by local peace officers and courts or usually not enforced at all. This is not to say that there is no environmental crime in the oil patch; in fact, there is a lot of it, mostly involving criminal violations from the way that oil and gas waste is handled and disposed. If these crimes are to be stopped, it will be because of the efforts of local governments.

B. Local Level Enforcement

1. Criminal Enforcement

Most enforcement of every category of criminal law happens at the local level. This includes enforcement of the Penal Code, Transportation Code, Health and Safety Code, Water Code, Natural Resources Code, Agricultural Code and other state laws containing criminal penalties. In some jurisdictions specialized environmental law enforcement officers have been appointed, but all peace officers can enforce the various environmental criminal statutes. A peace officer comfortable with enforcing THSC Chapters 481, 482, and 483 – the Texas drug laws – can also certainly enforce THSC Chapter 365 for illegal dumping violations. Peace officers including local police, sheriffs and their deputies, fire marshals, constables, and other sworn officers use these:

Four primary state criminal laws are used to fight pollution:

- THSC Chap. 341. Minimum Standards of Sanitation and Health Protection (used for Public Health Nuisances; applies statewide, inside cities and in unincorporated areas);
- THSC Chap. 343. Abatement of Public Nuisances (used in some unincorporated areas only);
- THSC Chap. 365. Litter (i.e., Illegal Dumping ... charges may be brought against the dumper, the hauler, and the possessor of the dumping location; based on the weight or volumes involved); and,
- Texas Water Code Chapter 7. Enforcement (see Subchapter E. Criminal Offenses and Penalties); there are about 40 environmental crimes provided here that cover such things as water pollution; hazardous waste mishandling; medical waste crimes; illegal outdoor burning; and used motor oil dumping.

If a city or county has problems related to the dumping of oil and gas waste, such as produced water, drilling mud, and fracking sand, it may also use the following criminal laws:

- Texas Water Code Chapter 29 Oil and Gas Waster Haulers (used to respond to several common criminal activities of oil and gas waste haulers); and,
- Natural Resources Code Chapter 91. Provisions Generally Applicable (used to respond to virtually any violation of a Waste Hauling Permit issued by the Texas Railroad Commission).

2. Civil enforcement

a. Municipal Codes

Most environmental enforcement in Texas happens inside cities, under the direction of municipal code enforcement officers. About 78% of Texans live in cities where code enforcement takes place, although there are great variations in effectiveness from city to city. In some places, codes are old, out-of-date, inconsistent with state law, and sometimes unfairly applied. In some places, code enforcement officers are subject to political control by elected officials wanting their own properties – and the properties of their friends – excluded from the process. In some places the numbers of cases and out-of-compliance properties are overwhelming. For example (according to the Office of Court Administration) in the calendar year 2014, municipal courts in Houston processed 66,332 new code violation cases in addition to reactivating 31,000 cases from the 101,400 inactive code cases beginning the year on January 1. These 104,000 code cases that the Houston municipal courts processed in 2014 were in addition to the thousands of cases that Houston code enforcement officers handled before they reached the court.

Of course, in the case of Houston these statistics changed radically in 2017 and 2018 as city management had to decide how to apply its municipal codes after the extensive flooding brought by Hurricane Harvey. Cities all along the coast will face the same management and staff utilization issues: When everywhere you look is a violation, how should the city proceed?

For illegal dumping enforcement, cities typically have two sorts of codes: (1) a violation for *having* refuse on a premises one possesses; and, (2) a separate violation for *putting* refuse on one's property and other property not approved for disposal. The first would require a property possessor to keep her property clean regardless of the source of the waste (Property possessor: *"But officer, somebody dumped those tires on me!"* Code Officer: *"I'm sorry m'am, but to allow the refuse to continue to be present on your land is a violation separate from any dumping. You'll have to clean it up."*)

The second violation would apply to the person – property possessor or not – who dumped waste on his own or onto other's property. When the dump site is not owned by the dumper, using police to respond to the illegal dumping (using the Litter Abatement Act or other Texas criminal law) is often the best response. That particular law may also be used in most

cases to respond to property possessors dumping on their own property, which generally is also prohibited. When waste is finally disposed, it needs to wind-up in landfills, recycling centers, and other authorized places.

b. Health Nuisance Abatement by Local Health Authorities

“A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.” THSC Sec. 121.021. Most counties have appointed a local health authority. Some have gone even further and created a formal administrative structure – called a *health department* – around this individual. Once appointed, this individual has specific duties. Regarding the health effects of illegal dumping, the local health authority has specific responsibility under THSC Sec. 341.012 to work with persons who have created Public Health Nuisances to abate those nuisances. If the nuisances are not abated within the time period specified by the health authority, local prosecutors have defined responsibilities to bring the violator before a judge to facilitate the abatement.

Unfortunately, local health authorities in Texas frequently confuse their authority to issue a citation (seeking punishment for creating a public health nuisance) with their responsibility to manage getting the nuisance abated (as required in THSC Sec. 341.012 but generally ignored).

Many counties have officers use THSC Chapter 343 to respond to “Public Nuisances” in many rural areas. Notice the absence of the word “Health” in that term. Because of built-in difficulties in applying that law, we encourage counties to either use THSC Chapter 341 (for Public Health Nuisances) instead, or use both Chapters 341 and 343 together. THSC Chapter 341 is much more comprehensive and easier to understand and enforce.

c. TWC Sec. 7.351 Civil Suits

Now seldom seen, the Texas Water Code, at Sec. 7.351, allows local cities and counties to use civil suits to respond to environmental violations affecting air, water, and our land. However, the actions of the 84th and 85th Legislatures pretty well removed this enforcement option as a useful local approach, but it may still be useful in some situations.

Common Enforcement Sequence

Statewide, this is the sequence most commonly seen inside cities. Counties don't have municipal codes to enforce, so they begin at #2.

1. Municipal Code Enforcement

Approximately 900 of Texas 1,200 cities have some form of code enforcement. Cities not having municipal courts may not attempt to enforce their codes, but instead work with local constables to enforce state Public Health Nuisance criminal laws inside city limits (with cases filed in JP courts).

2. Occasional Health Department Enforcement Against Public Health Nuisances

a. Most Local Health Authorities do no enforcement at all

The responsibility and authority to work with violators to abate Public Health Nuisances is specifically placed on the Local Health Authority as a requirement of that office. However, Local Health Authorities in cities and counties not having full Local Health Departments (as authorized by THSC Chapter 121) usually ignore the mandates to respond to Public Health Nuisances.

b. Issuing orders to abate a Public Health Nuisance as authorized at THSC Sec. 341.012

Some local health departments actively respond to Public Health Nuisances. However, issuing these abatement orders seldom involves following the state required process (i.e., local prosecutors are seldom involved). If the violator cleans the property, all is well. However, if the abatement order is ignored, rather than follow state law to have the prosecutor bring the violator into court, the health officer issues a citation for the underlying Public Health Violation (as authorized at THSC Sec. 341.091). When this case comes before the JP or Municipal Judge, a small fine can be imposed. However, at this point the judge cannot issue a court order to abate the Public Health Notice (that order would have come through the prosecutor who was earlier ignored).

3. Local Law Enforcement

a. Most local law enforcement agencies do no anti-pollution enforcement at all

Most police departments and sheriff offices statewide make no attempt to enforce state criminal laws against pollution, even though violations of these laws themselves can also constitute probable cause for other enforcement.

b. Illegal Dumping Enforcement

When local police do become involved, especially in larger cities and many progressive medium sized cities, their efforts are usually directed at illegal dumping enforcement under THSC Chapter 365.

4. Specialized Environmental Enforcement Officers

Usually working at the county level and often only in “problem” precincts, county deputy sheriffs enforce the full range of anti-pollution laws, including THSC Chapters 341, 343, and 365 and provisions of TWC Chapter 7. A growing number of Texas’ 254 counties have such programs, and where they are present ... and supported by commissioners and prosecutors ... they have proven to be very effective. The challenges in these programs is in earning such support and in having judges and prosecutors apply the laws as written (*e.g., where a punishment mandates that each day be treated as a separate offense, many judges regularly treat this provision as optional. See, for example, the mandatory provision at THSC Sec. 341.091(c). Failure to use his provision removes most of the value of enforcing Public Health Nuisance law against major, long term offenders*).

Conclusion

So you can see that the State Legislature has provided plenty of tools that local officials can use to greatly reduce pollution in their communities.

There is another more detailed summary of enforcement options in the class readings for *TIDRC001 Legal / Legislative Update Related to the Profession of Code Enforcement*. Please feel free to access the document through the class page at <http://tidrc.com/onlinelegal.html> and to use it in any way that will help your program.

There is also a book, Illegal Dumping Enforcement, Texas 2022 Edition, that goes deeply into these subjects. You can purchase this (\$28 a copy; discounts for multiple copies) at <http://tidrc.com/2022BookOrder.html>. Some officers have printed the entire set of class handouts from all the courses we provide and maintain these as a local enforcement library. That's perfectly fine with us too.

The rest of the classes in this series go into more detail on various laws and issues. Please feel free to access any of those readings from their class home pages too. If you want to take any of those classes for credit, you'll need to register (start at <http://tidrc.com/online.html> for that). But if you're wanting the information, it's yours to access and use for free.

As a long-time and very effective environmental enforcement officer regularly says, "Don't think you have to do EVERYTHING to get started. But just do SOMETHING!" That is very good advice.

That concludes the reading for this orientation class. You're free to take the test at this point, and you can take it as often as you need to achieve a score of 70%.

If you ever have any questions on environmental enforcement, please feel free to contact me, John Ockels, at ockels@tidrc.com.