

Reading for class:

TIDRC000
Orientation to Local Environmental
Enforcement

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Online Class Readings

TIDRC000 Orientation to Environmental Enforcement

This is the reading material for our online class that serves as an orientation to the subject. Like all our classes, it is approved by the TDLR for Continuing Education Credits, in this case one (1) hour.

It will also give you an idea of how our process works for all our classes: (1) Read the material; (2) Ask me any questions you might have along the way; (3) Take a simple test (open book; untimed; as many attempts as you need); (4) Receive your Certificate.

We've tried different approaches with these online classes, including requiring participants to watch hours of video, and we find that simply downloading the reading material works the best. In fact, there are academic studies that show retention to be better when working with printed material than when reading things online.

So, I urge you to take the time to just print the material. That way you can mark it up and mess with it any way you want. Carry it home with you; read it at lunch; put it in the truck for when you have a few minutes during the day. When you take the test, each question will point back to a page number on the reading material.

My name is John Ockels and I wrote all of these class readings. If you have any questions, quibbles, or corrections, please just email me at ockels@mac.com and I'll reply as soon as I can. I've been providing in-person classes in illegal dumping related subjects since the late 1990's and online classes since 2012. I got interested in this subject in the mid-1990's while working at Texoma Council of Governments and started training officers and elected officials then.

I find illegal dumping enforcement to be very fascinating. The laws themselves are simple, but their application has NOT been very uniform across the state. The question of "*Why are some cities and counties very active in this enforcement and why others just ignore their own cleanliness*" is something worth pondering. Often it comes down to an individual becoming personally invested in making a difference in their community.

Several important points govern this whole issue, in my opinion:

- There's a lot of ignorance about what can and cannot be done under the criminal laws controlling illegal dumping in Texas, such as answering the question "*Can a person dispose of waste on his or her own property?*" [Spoiler alert: Generally, not];

- Neither law enforcement officers, prosecutors, city managers, nor elected officials regularly encounter this material in their professional training;
- Most residents want to live in a clean, healthy, prosperous place and expect their cities and counties to make that happen;
- Enforcement is a local problem. The Texas Commission on Environmental Quality (TCEQ) effectively transferred almost all the responsibility for illegal dumping prevention and enforcement to local governments in 1996, but many elected officials still think enforcing is a state responsibility.

Predictable Enforcement Bottlenecks

In any city or county there are predictable bottlenecks where illegal dumping enforcement can be slowed or even stopped. These include:

- In cities: Code enforcement officers may not recognize pollution crimes;
- In cities: Police departments may refuse to respond to illegal dumping and Public Health Nuisance cases (*"We're don't do code!"*) until corrected by management;
- In unincorporated areas: Constables and deputies may not recognize pollution crimes when they see them;
- Both places: City and County officers may have been instructed by their managers to ignore pollution crimes because:
 - "We don't have the staff";
 - "We don't do code" (although these are criminal laws);
 - "We don't have the time";
 - "The people don't want us to enforce these laws";
 - "These aren't real crimes";
 - "The prosecutors told us to just write C Misdemeanor tickets for all illegal dumping, including felonies";
- Enforcing pollution crimes has three primary goals: (1) Protecting public health;
- (2) Protecting property values; and (3) Instilling pride in a community. Advancing these three values is worth at least a little attention from local criminal justice programs;
- Prosecutors may, in fact, have told officers to intentionally under-file environmental crime cases;
- Prosecutors may dismiss cases because they don't understand the pollution crimes laws and are afraid of losing;
- Good means exist to successfully encourage prosecutors to respond.

Most of these objections are matters of resource allocation and policy decisions, which can be re-visited by local elected officials.

Extra Training Required in Pollution Criminal Law Recognition and Enforcement

The anti-pollution criminal laws typically are not studied by anyone involved in local government in their initial professional training, Specifically,

- 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 (i.e., the Texas Health and Safety Code), they are simply not studied 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** (see THSC Chapter 121 LOCAL PUBLIC HEALTH REORGANIZATION ACT) are usually unaware of their duty to respond to Public Health Nuisances, as mandated in these laws (see THSC Sec. 341.012). Local Health Departments invariably just *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 anti-pollution 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.

Ignorance Abounds
Low Knowledge = Poor Enforcement
Poor Enforcement = Lower Community Health and Property Values

If a code enforcement officer cannot personally enforce state criminal environmental laws, why should he or she know them anyway? There are several answers to this, and here are two:

- (1) A great deal of the illegal dumping that code officers see in the neighborhoods is waste that has been 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, since this is often a felony. Code officers need to know when they see a crime taking place; and,
- (2) Code officers know their communities very well. 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 into the laws and their application to respond to pollution in cities and counties. Subsequent classes in this series cover:

- TIDRC001 Legal / Legislative Update for Code Officers
- TIDRC002 Oil and Gas Waste
- TIDRC003 Illegal Dumping Enforcement
- TIDRC004 Illegal Outdoor Burning
- TIDRC006 Ethics of Local Enforcement
- TIDRC007 Public Health Nuisance Enforcement
- TIDRC008 Scrap Tire Enforcement
- TIDRC009 Principles of Enforcement and Abatement
- TIDRC012 Coordinated Local Enforcement
- TIDRC015 Current Topics in Local Enforcement

You can find these classes listed on the home page at <https://tidrc.org>. If you want to take some of these classes for credit, there is a small fee. We also have discounts for taking multiple classes or for individuals or groups having access to these classes for a set fee for twelve months. And if you want to read the class materials for your own knowledge, please do so anytime.

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 local officials want. But residents overwhelmingly want their communities to be clean:

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."

Erin Douglas. *Texans tell environmental agency: Stop being reluctant to regulate industry.*
The Texas Tribune. June 22, 2022. <<https://tinyurl.com/2p82p4tb>>

Most of us with friends in the TCEQ know some 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 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.

Moreover, consider what state and federal laws require the TCEQ to oversee. Take a look at the TCEQ's Central Registry. Here's what I found when I did so recently:

- The Central Registry, in January 2024, contained information on **944,927 entities**;
- Of these, **397,374 had a status of "Active,"** which was 42% of the entire data base; however, some of the other 547,543 can constitute a demand on staff time in unusual circumstances;
- These cover **73 unique programs** to be regulated, including such things as *stormwater* (25,764 active entities); *petroleum storage tanks* (31,755); *air new source permits* (105,756); 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.
- Often 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.

Local governments MUST take the lead on most local pollution cases, simply because they are closer to the problems and there’s no one else to do it. 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 stating that, for the most part, in the future local governments were expected to handle illegal dumping themselves. 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, ask yourself honestly if your city or county is itself doing everything it can to deal with this problem. In most cases, the answer is, “No.”

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

Harsh Reality #2: You’ll not get far without LOCAL 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 had made about the high weeds on his property. As the officer was leaving this call, she 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 pile 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 had lived in the vacant house next to the lot, 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 felony crime scene, the officer called her Police Department to report what she was seeing.

However, this is the point when things began to go wrong. The police 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 regularly: They see a situation not covered by code or in which code simply won’t work. They recognize the crime but have no criminal enforcement power themselves. The organization the city (the police) 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 train their law enforcement officers to understand environmental crime and routinely respond to violations in their jurisdiction.

Just about everybody in local government has a role to play in stopping pollution in their community (see the list on page 3). When these officials work together, communities are healthier, cleaner, and more prosperous.

Outline of Local Enforcement

The rest of this paper is an outline of the entire local environmental enforcement process from our perspective. You may want to print this and keep it for future reference. Please feel free to provide this document to other members of you and other local Texas governments.

1. INTRODUCTION

- A. There are three kinds of government response to dumping and other forms of pollution
 - 1. ADMINISTRATIVE enforcement by state agencies only
 - a. Texas Commission on Environmental Quality (TCEQ)
 - (1) Staff of around 2,800 in Austin and their 16 regions
 - (2) Regulate almost 400,000 registered entities in 73 separate programs
 - (3) TCEQ doesn’t enforce most local illegal dumping [1996 policy decision sent to all County Judges]

- b. Railroad Commission of Texas (TRC)
 - (1) Administrative enforcement of the oil and gas industry and pipelines
 - (2) Has no criminal enforcement section ... Administrative only
- c. Examples of rules agencies enforce Administratively
 - (1) 30 T.A.C. 328, SUBCHAPTER F MANAGEMENT OF USED OR SCRAP TIRES (by the TCEQ)
 - (2) 30 T.A.C. 111 (Subchapter B) ILLEGAL OUT-DOOR BURNING RULES (by the TCEQ)
 - (3) 16 T.A.C. 3.8 WATER PROTECTION (Oil and gas waste haulers) (by the RRC)
- 2. MUNICIPAL CODE enforcement in Texas cities (900 of 1,200 Texas cities have code enforcement; covers about 76% of all Texans)
 - a. Codes should make property “possessors” (i.e., renters) responsible along with “owners” ... but often are written to be limited to “owners”
 - b. Can work well for “refuse on a lot” violations when the waste is on the possessor’s lot; otherwise not
 - c. Municipal code officers are often the first to spot crimes
 - d. If violations are criminal, response requires action of police
 - e. “We don’t do code!” is too often the position of police departments, so often no effective response to dumping takes place (this is a policy problem to be resolved)
- 3. CRIMINAL enforcement statewide
 - a. Very limited criminal enforcement from state agencies (low staffing)
 - (1) TCEQ has about a dozen non-law enforcement “Environmental Investigators”
 - (2) TPWD has about six specialized environmental law enforcement officers (Sergeant Game Wardens)
 - (3) RRC has no criminal enforcement unit ... strictly ADMINISTRATIVE
 - b. Consequently, almost all anti-pollution criminal enforcement is by local deputies, police, constables, and fire marshals
 - c. Some cities and counties designate specialized environmental enforcement officers, but this is not necessary
 - d. If YOUR local law enforcement doesn’t enforce these anti-pollution laws, probably nobody will
- B. Illegal Dumping is disposing any “solid waste” or “litter” in any unauthorized place (terms defined in THSC Chapter 365)
 - 1. Americans are about 4.25% of world’s population
 - 2. However, Americans consume a lot of world resources (i.e., 24% of energy; 19% copper; 21% of beef; etc.)

3. About 70% of American economy consists of goods and services directly consumed by residents
 4. All material goods used eventually become waste ... about 8 pounds per person per day when all wastes are included
 5. Since we lead the world in resource use, we also lead in waste generation
 6. All waste in Texas must be disposed in state-authorized places
- C. There are two kinds of illegal dumping
1. COMMERCIAL dumping by businesses and individuals
 - a. Commercial dumping is primarily to save money
 - b. In larger communities, it may be over 50% of all dumping
 - c. However, it is VERY seldom prosecuted as dumping by a company
 - d. Statewide, few prosecutors have experience in prosecuting non-individuals for crimes ... so they don't
 - e. Lite or no enforcement = more commercial dumping
 2. RESIDENTIAL dumping by households
 - a. Illegal dumping on property possessed by the dumper
 - b. Illegal dumping on other nearby property or at common sites
 3. MIMIC dumping in both COMMERCIAL and RESIDENTIAL categories
 - a. "A Christian is someone who has met a Christian." [Acts 8:26-40]
 - b. "A dumper is someone who has seen dumping."
 - c. "A dumper is someone who thinks only of himself."
- D. Who is primarily trying to stop the illegal dumper?
1. Stopping most illegal dumping is the responsibility of local government, not TCEQ
 2. Often, NOBODY stops dumping; many cities and counties just ignore the problem
 3. Municipal code enforcement handles "refuse on a lot" dumping by property possessor ... but not if the guy dumps across the street
 4. Local entities involved in dumping control
 - a. Law enforcement (police, deputies, constables, fire marshals)
 - b. Local Health Departments (fewer than 150 in state; formed under THSC Chapter 121)
 - c. Local Health Authorities (almost all counties have one)
 - d. County and District prosecutors;
 - e. JP's and Municipal Judges
 - f. Local elected officials and staff
 - g. Occasionally upset citizens and voters

5. Note: None of the state criminal anti-pollution laws must be adopted by city or county before using; the State Legislature has already done that, as they do all criminal laws; all cities and counties can do is enforce them or ignore them.
- E. Tools used to educate a dumper to stop dumping
1. Fines; confinement
 2. Community service [1 to 60 hours mandatory for illegal dumping conviction under THSC Chap 365.012(s); also, cleaning dump sites often part of plea agreements]
 3. Self-interest of dumper to avoid being designated a felon
 4. Publicity and public embarrassment
 5. Violator education courses sentenced by JP's and Municipal Judges
 6. Warnings and threats of the above
- F. Impact of ignoring dumping and other pollution
1. Decreases our humanity and sense of community
 2. Tolerated dumping confuses the public (*"Is local government ignoring dumping because it is incompetent or is it corrupt?"*)
 3. Threatens public health
 - a. Dumping creates Public Health Nuisances
 - b. Dumping often pollutes water, our most scarce resource
 - c. Dumping often harbors rats, snakes, and disease vectors
 4. Dumping is dangerous
 - a. Adds fuel to fires, threatening fire fighters
 - b. Hazardous waste direct threat to citizens
 5. Dumping decreases property values

2. ENFORCEMENT OPTIONS

- A. Do nothing ... Just live with the mess
1. Error #1: "A man can do whatever he wants with his own property."
 2. Error #2: "The voters don't care."
 3. Error #3: "Stopping dumping is too expensive."
 4. All of these are wrong; the opposite is true in each case
- B. Municipal code enforcement
1. Where available, municipal codes are the most used tool
 2. Not available in all Texas cities (available in 900 of 1,200)
 3. Not available in any unincorporated area
 4. Not effective for many properties inside city (vacant properties; public property; sometimes commercial property)

5. Code violation involving dumping of trash or refuse:
LG 54.001 allows fine to \$4,000 regardless of amount of waste
6. Code officers are not certified, trained, or authorized to enforce criminal laws
7. However, they are usually very aware of pollution crimes in their community
8. Adopting a Local Scrap Tire Ordinance may have value (30 TAC 328.52 authorizes) ... Can be tougher than state Administrative scrap tire rule

C. THSC Chapter 365 LITTER ABATEMENT ACT

1. Primary criminal law used to control criminal dumping
 - a. Primarily enforced by city and county law enforcement
 - b. Local Health Department may enforce at C Misdemeanor level in unincorporated areas
2. Follow the definitions used in this law very carefully
 - a. "Litter"
 - b. "Solid Waste"
 - c. If what's dumped is not included in these definitions, other laws need to be used, (for oil and gas waste, for instance, use TWC Chapter 29 and NRC Chapter 91)
3. Sets misdemeanors and SJ Felony for dumping LITTER and SOLID WASTE
4. Penalties are based on the WEIGHT or VOLUME of what was dumped
5. Covers dumping on land and into water for these violations:
 - a. Dumping or allowing or permitting disposal in unauthorized location
 - b. Receiving for disposal in any unauthorized location
 - c. Transporting for disposal to any unauthorized location
 - d. Space Stealing - Using someone else's dumpster without permission
6. Venues where dumping cases can be filed
 - a. The county where the alleged violator lives
 - b. The county where the alleged dumping took place (including counties through which illegal transporting for disposal takes place)
 - c. Travis County (although seldom used for these violations)
7. All convictions at any level (including Class C) require community service up to 60 hours (often overlooked by court and not imposed; and where it is used, is usually less than 60 hours) [see THSC Sec. 365.012(s)]
8. This law applies to all public and private property in Texas
9. Strict liability law at misdemeanor level: no culpability needs to be shown for misdemeanor conviction
10. Allows very limited disposal on one's own land provided ALL of these are true:
 - a. It is done by an individual (nor a partnership, corporation, etc.);

- b. The waste is generated and disposed on land the individual owns;
 - c. The waste is not from a commercial activity; and,
 - d. The disposal is not for the purpose of economic gain (i.e., saving/making money)
11. The provisions allowing seizure of a vehicle used in dumping are unworkable
- a. Only potentially allowed after second or subsequent conviction
 - b. Requires written warning at time of first conviction (seldom given)
 - c. Only applies when the violation is an A Misdemeanor (but not for SJ Felony) CCP Chapter 59. FORFEITURE OF CONTRABAND [Sec. 59.01(2)(B)(v)]
 - d. More common practice: Impound vehicle as evidence in case
12. Statute of Limitations
- a. This is one of the few anti-pollution laws subject to time limitations following criminal act
 - (1) Laws involving “dumping” and “discharge” have time limits within which an indictment or information must be obtained
 - (2) Laws involving waste storage or an ongoing condition (like water pollution) not subject to limits
 - b. Limits for THSC Chapter 365 [see CCP Chapter 12. LIMITATION]
 - (1) Felony: No more than three years to indict following the dumping
 - (2) Misdemeanor: No more than two years to produce an information following the dumping
13. Additional criminal charges possibly created by the dumping depending on location of dumping, what is dumped, and result of dumping; for example:
- a. Public Health Nuisance (THSC Chapter 341) [Very commonly caused by dumping]
 - b. Water pollution (TWC Secs. 7.145 & 7.147)
 - c. Hazardous waste violations (TWC Sec. 7.161)
 - d. Medical waste violations (TWC Sec. 7.164 ff)
 - e. Waste motor oil violations (TWC Sec. 7.176)
 - f. Lead-acid battery violations (TWC Sec. 7.185)
 - g. Illegal burning if the waste is burned (TWC Sec. 7.177) [Note sentencing problems for misdemeanor illegal burning; discuss with County Attorney]
14. Change by State Legislature effective September 1, 2023:
- a. Added to THSC Sec. 365.012: *“(t) Chapter 15, Penal Code, applies to an offense under this section.”*

- b. This applies Penal Code Chap 15 PREPARATORY OFFENSES to dumping
 - (1) PC Chap 15.01 CRIMINAL ATTEMPT to violate THSC Chap 365 whether one is successful or not (e.g., being stopped from dumping or charged with hauling for disposal)
 - (2) PC Chap 15.02 CRIMINAL CONSPIRACY to violate THSC Chap 365 whether one is successful or not (e.g., boss ordering hauler to dump at unauthorized location)
 - c. An agreement constituting a violation of PC Chap 15.02 may be inferred from the acts of the parties
- D. THSC Chapter 341 MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES
1. This is a long (over 65 pages) “catch-all” law
 2. However, we use just a few pages defining and controlling Public Health Nuisance (at start) and penalties (at end)
 3. In force now in all cities and counties in Texas (no local adoption needed)
 - a. Inside cities: This is the next step following Municipal codes if they don’t work or can’t be used
 - b. In unincorporated areas: Use Chapter 341 alone or with Chapter 343
 4. This law requires a specific abatement process that is usually ignored (Sec. 341.012 [b] – [d])
 5. Consequently, there are many Public Health Nuisances unabated throughout Texas
 6. Structure of this law
 - a. Sec. 341.001 contains definitions, including an important definition of “sanitary”
 - b. Sec. 341.011 contains a list of twelve Public Health Nuisances
 - c. Sec. 341.012 contains the specific process for abating a Public Health Nuisance:
 - (1) Property possessor (owner; renter) is expected to abate a PHN as soon as he learns of it
 - (2) Otherwise, the Local Health Authority issues a Notice to Abate to “*any person responsible*”
 - (a) No statutory time to abate specified ... time given depends on the situation
 - (b) Copy of Notice to the violator; copy retained for Local Health Authority
 - (c) Copy to city, county, or district prosecutor (this step almost always ignored)

- (3) If abatement doesn't happen within the time specified
 - (a) Local Health Authority informs the Prosecutor receiving the original notice
 - (b) Prosecutor takes the violator into court for abatement order
 - (c) Continued failure to abate would constitute contempt of court
 - (4) Alternative *unsuccessful* process usually followed
 - (a) Abatement Notice is given to the person responsible for the PHN
 - (b) No copy given to Prosecutor
 - (c) After Notice time passes, Prosecutor not informed
 - (d) Local Health Authority representative abandons efforts to cause abatement
 - (e) Instead, Local Health Authority representative issues a citation for underlying violation of THSC Chapter 341
 - (f) But JP or Municipal Judge eventually hearing that case has no authority order abatement (see Sec. 341.091 for list of penalties following conviction)
 - (g) Consequently: If PHN not abated voluntarily, the nuisance may persist much longer than it would have had the mandated process been followed
 - d. Sec. 341.013(c) is very useful and commonly used PHN violation:
 - “Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, re-fuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.”*
 - e. Sec. 341.017 addresses specific violations on disposal of human excreta
 - f. Sec. 341.019 addresses mosquito control on uninhabited residential property
 - g. Sec. 341.091 contains penalties for violations (heard by JP or Municipal Judge)
 - (1) Fine of \$10 to \$200 per PHN violation per day (first offense)
 - (2) Each day of a continuing violation is a separate offense.
 - (3) Subsequent conviction of violating Sec. 341 with-in one year of last conviction
 - (a) Fine of \$10 to \$1,000 per PHN per day
 - (b) Up to 30 days in jail
 - (4) Judge has no expressed power to order abatement
7. Illegal dumping almost always results in creation of Public Health Nuisance

E. THSC Chapter 343 PUBLIC NUISANCE

1. Identifies 13 prohibited actions as Public Nuisances (notice that these are not Public HEALTH Nuisances ... just Public Nuisances)
2. This law covers limited sections of unincorporated areas
 - a. Different violations apply only to their own unincorporated areas
 - b. None appl to including “agricultural land” or site or facility licensed, permitted, or regulated by the state to under-take an otherwise prohibited activity
 - c. Several of the 13 prohibitions only apply to platted subdivisions
3. Originally passed in 1989 prohibiting substandard structures in rural Harris County
4. Now its 13 prohibitions apply to all counties in Texas, regardless of population
5. Clumsy to use: Requires a 30-day warning notice from the county before citation given, hence two trips must be made by officer to inspect the site
6. Definitions [Sec. 343.002]
 - a. Law applies to all *privately owned* property in the applicable areas
 - b. Includes a comprehensive set of definitions
 - c. Definition of “weeds” more stringent than in most cities
7. Allows county prohibition or control of access to property for some of the 13 nuisances under some circumstances [Sec. 343.013]
8. Criminal Penalties [Sec. 343.012]
 - a. Fine of \$50 to \$200 per day per offense
 - b. Each day of a continuing violation is a separate offense
 - c. JP Court must order abatement of nuisance upon conviction (differs from THSC SEC. 341.091)
 - d. Subsequent conviction ever in the life of the violator:
 - (1) Fines \$200 to \$1,000 per violation per day
 - (2) Up to six months in jail
9. County and “person affected” can both seek injunctions to stop a violation
10. County commissioners court *may* adopt procedures described in Subchapter C to abate nuisance and set liens
 - a. Probably 25 Texas counties have adopted such a set of procedures
 - b. Note: Subchapters A and B are already adopted by the Legislature and are in effect statewide without commissioners court needing to approve them; Subchapter C adoption is optional by county

11. Officers working in unincorporated areas may use Secs. 343 and 341 together
 - a. Works where a Sec. 341 Public Health Nuisance and a Sec. 343 Public Nuisance are both present
 - b. Officer gives an immediate citation for the Sec. 341 PHN
 - c. Writes on the citation: "This constitutes the beginning of the required 30-day warning for the following violation of THSC Chapter 343: ____."
 - d. When the Sec. 341 violation comes before the JP, he or she knows that a Sec. 343 violation may soon follow and can council the Sec. 341 violator accordingly
 12. Enhanced rights to enter property to "inspect, investigate, or abate a nuisance or to enforce this chapter" provided at Sec. 343.024
- F. Texas Water Code Chapter 7 (Subchapter E)
1. Contains approximately 50 additional specialized anti-pollution criminal laws
 2. Some are commonly used; others have probably never been used in Texas
 3. Cover such things as water pollution; hazardous waste; medical waste; used motor oil; lead-acid batteries; felony and misdemeanor illegal outdoor burning; and some obscure areas; disposal that may put others at risk
 4. Most are special misdemeanors and felonies with very large fines
 5. Water Pollution: "Unauthorized Discharge"
 - a. "Water" definition very wide; includes beds/banks of dry watercourses
"Water" or "water in the state" means ground-water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. [TWC Chapter 26]
 - b. Each day of a continuing violation is a separate offense
 - c. Primary Offenses (per day of violation)
 - (1) TWC 7.145: Intentional or Knowing Unauthorized Discharge (Felony)
 - (a) Individual: Fine of \$1K to \$100,000 and/or 5 years confinement
 - (b) Non-individual: Fine of \$1K to \$250,000
 - (c) Two ways to prove the violation; one requires no water testing
 - (2) TWC Sec. 7.147: Unauthorized Discharge (Misdemeanor)
 - (a) Individual: Fine of \$1K to \$50,000 and/or 1 year confinement
 - (b) Non-individual: Fine of \$1K to \$100,000
 - (c) Only one way to prove violation: always requires water testing
 - (d) Strict liability misdemeanor: no culpability needs to be proven

6. Used Motor Oil [TWC Sec. 7.176]
 - a. Criminalizes about everything your father said to do with waste motor oil
 - b. First conviction: Fine of \$1K to \$50K; 5 years in jail
 - c. Subsequent conviction: Fine of \$1K to \$100K; 15 years confinement
 - d. Law silent as to volumes; however, local grand juries may not be willing to indict for small volumes (if so, then use another violation)
7. Lead-acid batteries (TWC Sec. 7.185)
 - a. Include car, boat, and motorcycle batteries
 - b. Must be disposed in accordance with THSC Sec. 361.451 (i.e., no disposal on land or in landfills; special disposal process only)
 - c. Each day of violation is a separate Class A misdemeanor
8. Illegal Outdoor Burning
 - a. Felonies defined at TWC Secs. 7.182 and 7.183
 - b. Felony penalties: \$1 to \$500,000 + confinement to 5 years
 - c. Misdemeanor illegal burning [TWC Sec. 7.177] has contradictory penalties and is difficult to enforce; some jurisdictions charge Illegal Dumping rather than misdemeanor burning; Consult with your county attorney before charging misdemeanor burning
- G. Additional Specified Major Misdemeanors and Felonies (Applies everywhere in Texas) TWC Sec. 7.141 to TWC Sec. 7.185

These carry a wide range of penalties, including major fines and confinement time. As in the case of hazardous waste mishandling or dumping, the illegal dumping or other polluting activity may meet the elements in one or more of these statutes. These violations are all enforced by Peace officers.

Not Classified:

Sec. 7.142. Unlawful Use of State Water

Sec. 7.143. Violation of Minimum State Standards or Subdivision Rules
(Water Related)

Sec. 7.148. Failure to Properly Use (Water) Pollution Control Measures

Sec. 7.149. False Statement (Water Related)

Sec. 7.150. Failure to Notify or Report Spill (TWC Chapter 26)

Sec. 7.152. Intentional or Knowing Unauthorized Discharge and Knowing Endangerment

Sec. 7.153. Intentional or Knowing Unauthorized Discharge and Endangerment

Sec. 7.154. Reckless Unauthorized Discharge and Endangerment

Sec. 7.155. Violation Relating to Discharge or Spill

Miscellaneous Sub-Surface Violations:

- Sec. 7.156. Violation Relating to Underground Storage Tanks
- Sec. 7.157. Violation Relating to Injection Wells
- Sec. 7.158. Violation Relating to Plugging Wells
- Sec. 7.159. Violation Relating to Water Wells or Drilled or Mined Shafts
- Sec. 7.161. Violation Relating to Solid Waste in Enclosed Containers or Vehicles

Medical Waste:

- Sec. 7.164. Violations Relating to Medical Waste: Large Generator
- Sec. 7.165. Violations Relating to Medical Waste: Small Generator
- Sec. 7.166. Violations Relating to Transportation of Medical Waste
- Sec. 7.167. False Statements Relating to Medical Waste
- Sec. 7.168. Intentional or Knowing Violation Relating to Medical Waste and Knowing Endangerment
- Sec. 7.169. Intentional or Knowing Violation Relating to Medical Waste and Endangerment
- Sec. 7.170. Intentional or Knowing Release of Medical Waste into Environment and Endangerment
- Sec. 7.171. Reckless Release of Medical Waste into Environment and Endangerment

Sewage System Related:

- Sec. 7.172. Failure of Sewage System Installer to Register
- Sec. 7.173. Violation Relating to Sewage Disposal
- Sec. 7.1735. Violation Relating to Maintenance of Sewage Disposal System
- Sec. 7.174. Violation of Sewage Disposal System Permit Provision

Additional Air Violations:

- Sec. 7.178. Failure to Pay Fees Under Clean Air Act
- Sec. 7.179. False Representations Under Clean Air Act
- Sec. 7.180. Failure to Notify Under Clean Air Act
- Sec. 7.181. Improper Use of Monitoring Device
- Sec. 7.1831. Violation of Locally Enforced Motor Vehicle Idling Limitations
- Sec. 7.184. Violations Relating to Low-Level Radioactive Waste

Lead-Acid Batteries:

- Sec. 7.185. Knowing or Intentional Unauthorized Disposal of Lead-Acid Batteries (each day is a separate Class A misdemeanor).

3. ABATEMENT OPTIONS

A. DO NOTHING

1. Most popular option in many counties and parts of cities
2. Official excuses always available

B. Abatement By Possessor **BEFORE** Local Government Intervention

1. These possessors routinely follow municipal codes without being reminded
2. Public Health Nuisances abated by possessor when possessor discovers the PHN [Sec. 341.012(a)]
3. Rural Public Nuisances abated before county gives notice [Sec. 343.012(a)(2)]
4. Residents and companies routinely properly dispose of waste as normal practice

C. Abatement **FACILITATED BY** Local Government

1. Regional planning commission, city, county waste amnesty events
2. City managed permanent household hazardous waste, tire, battery drop-off station
3. Non-government clean-up jamborees in neighborhoods

D. Abatement **REQUESTED BY** Local Government

1. Municipal codes are followed when resident is requested to do so by city
2. Public Health Nuisance abated after notice from Local Health Authority [THSC Sec. 341.012 (b) – (d)]
3. Rural Public Nuisance abated by potential violator during the 30-day notice period [THSC Sec. 343.012 (a)(2)]
4. Illegally dumped material abated by violator when requested by officer; charges may or may not be filed for THSC Chapter 365 violation, depending on local policy

E. Abatement **FORCED BY** Local Government

1. Abatement follows order of municipal court
2. Public Health Nuisance abated through intervention of Local Health Authority and prosecutor [THSC Sec. 341.012 (b) – (d)]
3. Rural Public Nuisance abated following order by JP [THSC Sec. 343.012(e)]
4. Illegal Dumping – Mandatory community service time spent picking up litter [THSC Sec. 365.012(s) requires up to 60 hours community service]
5. Illegal Dumping “Abatement Through Enforcement”

F. Abatement **DONE BY** Local Government

1. Supplemental Environmental Projects [TWC Sec. 7.076]
2. County precincts occasionally clean dumping on public lands as time and budget constraints allow

3. Cities endlessly cleaning up behind dumpers using city staff or contractors (generally a bad policy)
 4. Done by counties who have adopted and are using the process of rural forced abatement [THSC Sec. 343, Subchapter C]
- G. General good ideas involving abatement
1. Always require a landfill receipt when abatement done by violator to prevent re-dumping
 2. THSC Chapter 343 requires JP to order abatement
 3. THSC Chapter 341 uses the Local Health Authority and prosecutor
 4. Local Health Authority is often AWOL, so Public Health Nuisances unabated all over Texas

4. WHAT WE'VE LEARNED SO FAR (LESSONS FROM ACROSS TEXAS)

- A. Stopping illegal dumping is primarily the job of local government, not the TCEQ
- B. By itself, code enforcement can't stop illegal dumping
- C. Local law enforcement agencies are often reluctant to get involved
- D. The laws learned are easy to learn, but not studied in police academies and law schools
- E. In some jurisdictions, small businesses are the source of most COMMERCIAL dumping
- F. Local government departments must coordinate their activities and be aligned in their objectives to control illegal dumping
 1. If sheriff, prosecutors, or commissioners don't want these laws enforced, they won't be
 2. *"Just clean it up and we'll ignore the crime"* does not constitute enforcement and just makes dumpers clever about where to dump
- G. Local Enforcement Programs are often under attack and must act to remain sustainable
 1. Local enforcement programs should emphasize their value to community health
 2. Most local programs fail to maintain sufficient numeric records objectively showing their value
 3. As city and county budgets shrink, local enforcement programs may lose funding
 4. Too many local enforcement programs are successful because of one or two strong personalities rather than overall strong managerial practices or elected official support; when the strong personality leaves, the program collapses
 5. Even-handed enforcement occasionally directly impacts an elected official or the friend or relative of an official, generating push-back

6. Routine turnover in elected officials may result in pressures to curtail or close a local enforcement program if the new officials don't see its value
7. Local programs should use social media and other forms of publicity to create and maintain public support

5. OFFICER SAFETY

- A. Physical threats come in all sizes: viruses; bacteria; chemicals; people; weather
- B. Organizations need to increase focus on officer protection, including training in dealing with mentally ill people
- C. Anticipate your work environment to become more chaotic

You might ponder Jesus' directions to his disciples be-fore sending them out on a mission. It is certainly good advice for municipal code officers and for law enforcement officers as well. Both will often be telling citizens that, for the first time, they aren't allowed to dump their waste anywhere they want, including on their own property: "Behold, I am sending you like sheep in the midst of wolves; so be shrewd as serpents and simple as doves." [Matthew 10:16]

- D. In addition to physical dangers, enforcement jobs are also inherently emotionally and spiritually stressful. Officers need to do a better job of taking care if their physical and emotional health.

6. CONCLUSION

You can see that the State Legislature has provided plenty of tools that local officials can use to greatly reduce pollution in their communities. If local governments will use these tools aggressively, they will be able to control local dumping.

There is a book on this subject, Illegal Dumping Enforcement, Texas 2022 Edition, that goes deeply into these topics. You can purchase this (\$28 a copy; discounts for multiple copies) at <https://tidrc.org>. 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 <https://tidrc.org> for that). But if you're wanting the information, it's yours to access and use for free.

As a long-time 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.

Last Thing: Test Your Knowledge

That's all the class material, so you are ready for the test. Don't forget that you can take your exam as often as you need to; open book; and there is not time required between retesting.

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