

Illegal Dumping Enforcement
Officer's Guide

Texas 2024 Edition

Reading for class:

TIDRC002
Oil and Gas Waste

Chapter 13: Oil and Gas Waste
(Pages 210 – 247)

John H. Ockels, Ph.D.

Chapter 13: Oil and Gas Waste

Most likely, only cities and counties will use criminal law to stop dumping of oil and gas waste. There's really no one else to do it.

In calendar year 2022, the Railroad Commission of Texas reported a total of 5,757 oil producer operators active in the state, the largest being Pioneer Natural Resources, USA, Inc, which reported producing just under 180 million barrels of oil from its 3,979 leases that year. Overall, oil producers reported extracting 1,540,756,020 barrels of oil in Texas in 2022.

Additionally, nearly 1,600 active gas operators produced 7,283,228,636 MCF (thousand cubic feet) of gas in 2022. About 40% of utility generated electricity in the United States comes from burning natural gas.

Oil and gas are produced in America by 916,934 wells, according to the U.S. Energy Information Administration (December 2022).

Well Inventory for Texas as of July 31, 2023

436,342 Oil and Gas Wells

- **287,024 Active Wells**
 - **161,815 Producing Oil**
 - 16,141 producing over 100 Barrels Oil Per Day
 - 42,147 producing between 100 and 10 BOPD
 - 103,527 producing under 10 BOPD
 - **86,810 Producing Gas**
 - **38,399 Service**
 - 31,593 Injection and Disposal Wells
 - 5,882 Other
 - 924 Hydrocarbon Storage/ Withdrawal/ Brine Mining
- **149,318 Inactive Oil and Gas Wells**

*Texas Railroad Commission
Monthly Data Available Through tinyurl.com/tidrc18*

All oil and gas wells produce waste through their initial drilling, completing, production, and final closure life cycle. The most common waste from oil and gas wells in Texas is produced water, which requires special control on hauling and disposal. The purpose of the Railroad Commission issuing Waste Hauler Permits is to control the off-lease flow of this highly saline and potentially destructive waste.

An unknown question is the degree to which the TCEQ is going to allow the discharge of produced water into surface streams. The increasing number of earthquakes in oil producing areas tied to injection wells has resulted in what is likely to be a major change in state disposal policy. Please read an excellent discussion of this topic at <https://tinyurl.com/tidrc30>

A process of elimination leads to the conclusion that probably only cities and counties have the opportunity and motivation to use existing criminal law to stop dumping of produced water, drilling mud, well work-over and other forms of oil and gas waste.

- The Railroad Commission of Texas doesn't have a criminal enforcement group. All their enforcement is administrative, and there's just too much activity for its inspectors to be everywhere.
- The TCEQ, including the TCEQ Environmental Crimes Unit, is limited by the State Legislature to working on *air issues only* in the oil and gas business. Water and solid waste violations are in the hands of the Railroad Commission [see 16 Texas Administrative Code 3.30 Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) for the legislative mandated division of duties].
- The Environmental Crimes Unit of the Texas Parks and Wildlife Department is very small. It does have jurisdiction over all media and all locations, although policies may keep this agency away from policing the oil and gas business.
- Only counties and cities affected by oil and gas waste crimes are at the point of the crime and motivated to act.

Oil and Gas Wastes Are Unique

State law defines different types of waste, and different laws and rules exist to deal with these various categories.

For example, if you want to use the Texas Litter Abatement Act — THSC Chapter 365 — to file criminal charges against a person who dumps waste in some unauthorized location, you'll quickly see that this law can only be used to control two types of waste: *litter* and *solid waste*. *Litter* is defined in the statute itself at THSC Sec. 365.011(6); Sec. 365.011(9) reads that "*Solid waste*" has the meaning assigned by Section 361.003. So, you would go read that section for the definition of *solid waste*.

If you think you want to use TWC Chapter 365 to deal with illegal dumping, you must be sure that the waste that you suspect of having been criminally mishandled meets the definition contained in that law of either *litter* or *solid waste*. If you try to use THSC Chapter 365 to deal with anything that does not meet the definition of *litter* or *solid waste* — such as *oil and gas waste* — then you are simply using the wrong law, and the case hopefully will not be accepted by your prosecutor.

Likewise, if you want to enforce the felony water pollution section found at Texas Water Code Sec. 7.145, you must be sure that the material that was intentionally or knowingly discharged into or adjacent to water was either a *waste* or *pollutant* as defined in the Texas Water Code at Chapter 26. *Waste* and *pollutant* cover a much wider set of waste than do *litter* and *solid waste*. Texas environmental enforcement laws rely heavily on definitions, and cases are won and lost on these.

What is Oil and Gas Waste?

Oil and gas waste is defined at several places in state law (happily, all the definitions agree with each other). We'll use the definition that is provided in the Texas Natural Resources Code at Chapter 91. There are six subcategories of waste in this definition, each generated from various activities. The subcategory we are specifically interested in is (a)(6), which includes waste from drilling activities.

NATURAL RESOURCES CODE

Sec. 91.1011. Oil and Gas Waste

(a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" includes saltwater, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material.

Different types of oil and gas waste are often generated during different phases of the exploration and production processes:

1. During the drilling process itself, the most common waste is used drilling cuttings mixed with excess drilling fluids, commonly called **drilling mud**. This is probably the most visible — but certainly not the most common — of all oil and gas waste. Drilling mud can be recycled and use multiple times before eventually being classified as a waste to be disposed.
2. During the well completion process, the most common wastes are **waste fluids from hydraulic fracturing** and other non-liquid and waste materials (such as **unused fracking sand**) generated in the well completion process. Note that excess fracking sand not used on a job may sometimes be dumped somewhere by a driver. This "sand" usually contains chemicals. Since fracking jobs are unique, the need for different types of sand often results in "left over" amounts being dumped after a job is finished. This unused sand is not oil and gas waste, and its dumping is usually in violation of THSC Chapter 365 as an illegally disposed industrial waste (included there in the definition of *solid waste*).
3. During the life of the well, **liquid wastes** from various work-over process; hydraulic fracturing may occur more than once, producing oil and gas waste each time.

4. During the overall life of the well, the most common waste by far is **produced saltwater** that comes with the oil and gas extracted. This produced saltwater is separated at the well site, and must be properly disposed, usually off-site into an injection/disposal well.
5. Not all oil and gas waste is obvious. For example, **discarded equipment** and **metal storage tanks** used to extract, process, or temporarily store oil or gas *prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel* may also be classified as oil and gas waste. If you are having trouble deciding if a particular waste is oil and gas waste or not, talk it over with your district RRC office.
6. At any time, such wastes as **human sewage** and common **trash and rubbish** may be generated by the persons engaged in the processes of drilling for or producing oil or gas. **Unexpectedly, this waste is also classified as oil and gas waste** even though the RRC may not understand the requirements for proper disposal.

Importance of “Statewide Rule 8” Violations

This is the long rule (about 20 pages overall) that is the heart of oil and gas waste regulation by the state. Its formal name is *16 Texas Administrative Code Sec. 3.8 WATER PROTECTION*, and it can be read online, beginning at tinyurl.com/tidrc16.

Some of its provisions are more easily applied by local government than others, so don't get bogged-down in the definitions designed for the oil and gas professionals.

Waste Hauler Permits – WHP's – for entities wanting to transport oil and gas waste off the lease for disposal for hire are issued under the provisions of this rule.

Because of the importance of this rule, officers who desire to enforce criminal laws against oil and gas waste haulers are strongly advised to read this rule in its entirety. Some of its more important contents are included in the Appendix to this book, but there is no substitution for reading the entire rule, more than once.

While only the Railroad Commission may enforce this rule administratively, any violation of its provision is a crime under Texas Natural Resources Code Sec. 91.002, which is discussed below. These criminal violations may be enforced by city or county law enforcement.

THE WASTE HAULER PERMIT

Oil and gas waste, when it is hauled off the lease for the purpose of disposal, can only legally be hauled and handled under a Waste Hauler's Permit issued to the hauling entity by the Railroad Commission of Texas.

This is a four-part permit that is good for one year and that must be carried in the cab of any vehicle hauling oil and gas waste. The permit number and the permit holder's name must be shown on the back and both sides of the trailer actually holding the waste (not the cab pulling the trailer), in letters at least three inches high.

An example WHP follows on the next several pages. For the first two pages, we show an actual approved WHP as well as a blank form that may be more easily read.

A person wanting to legally haul oil and gas waste off a lease in Texas for disposal must obtain a permit from the RRC to do so. The application fee is generally \$250, although additional surcharges may from time to time be applied by the agency. The Railroad Commission takes the completed application; stamps it in a couple of places; adds it to their online data base; and returns the approved form to the applicant. The applicant then copies the approved WHP to have one in every vehicle listed on the application as being used to haul waste. Hauling oil and gas waste without having a WHP on-board the vehicle is one common way of violating the permit, but there are many others.

The face (first page) of the approved application, shows permit holder information; RRC Districts where the vehicle is authorized to operate; the RRC District where the vehicle is authorized to be stored when not in use; and the WHP number issued. The name of the permit holder ("Block 1") and the WHP number issued ("Block 3") is the information to be displayed on the trailer. Vehicles operating or being stored outside the RRC Districts shown are doing so in violation.

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division
Environment Permits
P.O. Box 12967
Austin, TX 78711-2967

**APPLICATION FOR OIL AND GAS
WASTE HAULER'S PERMIT**

WH-1
Rev 4/94
WWW-1

TYPE OR PRINT USING BLACK OR BLUE INK		READ INSTRUCTIONS BELOW
1. Hauler name and address exactly as shown on P-5 Organization Report, including city, state and zip code.		2. Hauler P-5 Organization No.
		3. Purpose of filing <input type="checkbox"/> Initial permit application <input type="checkbox"/> Amendment of permit no. _____ <input type="checkbox"/> Annual renewal of permit no.
		5. Number designation of all Railroad Commission districts with yards where hauler vehicles are housed.
4. Number designation of all Railroad Commission districts where the hauler will pick up, transport or dispose of wastes.		
CERTIFICATION: I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge. If the above-named hauler is a corporation, I further certify that it is either subject to and not delinquent on the State of Texas Franchise Tax or exempt from or not subject to the tax.		
Signature _____		Name (type or print) _____
Title _____		Phone _____ Date _____

INSTRUCTIONS

Form WH-1: Application for Oil and Gas Waste Hauler's Permit
Reference: Statewide Rule 8(f)

- WHO MUST FILE** A person who transports oil and gas waste for hire by any method other than by pipeline off a lease, unit, or other oil and gas property for disposal as required by Statewide Rule 8(f).
Note: A person may haul oil and gas waste for use in connection with drilling or servicing an oil or gas well without obtaining an oil and gas waste hauler permit.
- PERMIT APPLICATION** A non-refundable fee of \$100 must be filed with each application for issuance, renewal, or material amendment of an oil and gas waste hauler permit. The check or money order should be made payable to "Railroad Commission of Texas". The following are not considered to be material amendments of an existing permit: addition or deletion of vehicles on the WH-2 and addition or deletion of an approved disposal/injection system on a WH-3.
- INITIAL PERMIT APPLICATION**
1. File a Form P-5, Organization Report, along with the appropriate financial security with the Commission in Austin.
 2. File an original of each of the following forms with the Commission's Director of Environmental Services in Austin as soon as you have received your P-5 organization number.
 - a. Form WH-1: Application for Oil and Gas Waste Hauler's Permit
 - b. Form WH-2: Oil and Gas Waste Hauler's List of Vehicles
 - c. Form WH-3: Oil and Gas Waste Hauler's Authority to Use an Approved Disposal/Injection SystemSee General Instructions below.
- RENEWAL PROCEDURES** The Commission's Austin office will mail a renewal notice to you approximately 60 days before your permit expires. The notice will include a pre-printed Form WH-1, preliminary lists of approved vehicles and approved disposal/injection systems, and instructions on the renewal process. See General Instructions below.
- GENERAL INSTRUCTIONS**
1. When the completed application is approved, the original Form WH-1 will be returned to you and will serve as your permit. At the same time, you will receive Permit Attachment A (Waste Hauler's Vehicle Identification) and Permit Attachment B (Approved Disposal/Injection Systems). Each vehicle must carry a copy of the permit including those parts of the Commission-issued attachments listing approved vehicles and Commission-permitted disposal systems that are relevant to that vehicle's activities.
 2. You must file a Form WH-3 with the Commission in Austin before using any system that is not shown on your current Permit Attachment B (Approved Disposal/Injection Systems). After the Form WH-3 is approved, you will be sent a revised Permit Attachment B with that system included.

FRANCHISE TAX CERTIFICATION: House Bill 175 (70th Legislature) states that a corporation may not be granted a permit unless it is current on Franchise Tax payment or is exempt from or not subject to tax. A false certification will result in permit revocation.

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division
Environmental Services
P.O. Box 12987
Austin, Texas 78711-2987

**APPLICATION FOR OIL AND GAS
WASTE HAULER'S PERMIT**

WH-1
Rev. 4/94

1. Hauler name and address exactly as shown on P-5 organization report, including city, state, and zip code. WASTE FACILITIES, INC. P O BOX 541743 GRAND PRAIRIE, TX 75054-0000		2. Hauler's P-5 organization no. 6076099	
3. Purpose of filing <input type="checkbox"/> Initial permit application <input type="checkbox"/> Amendment of permit no. _____ <input checked="" type="checkbox"/> Annual Renewal of permit no. 3315		4. Number designation of all Railroad Commission districts where the hauler will pick up, transport or dispose of waste: 02, 03, 04,	
5. Number designation of all Railroad Commission districts with yards where hauler vehicles are housed: 04,		CERTIFICATION. I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge. If the above-named hauler is a corporation, I further certify that it is either subject to and not delinquent on the State of Texas Franchise Tax or exempt from or not subject to the tax.	
Signature: <i>[Signature]</i>		Name (type or print): <i>Jeff Cannon</i>	
Title: <i>President</i>		Phone: <i>972-262-8713</i> Date: <i>2/18/13</i>	

INSTRUCTIONS

Form WH-1: Application for Oil and Gas Waste Hauler's Permit
Reference: Statewide Rule 8(f)

- WHO MUST FILE** A person who transports oil and gas waste for hire by any method other than by pipeline off a lease, unit, or other oil gas property for disposal as required by Statewide Rule 8(f).
- NOTE:** A person may haul oil and gas waste for use in connection with drilling or servicing an oil or gas well without obtaining an oil and gas waste hauler permit.
- PERMIT APPLICATION FEE** A non-refundable fee of \$100 must be filed with each application for issuance, renewal, or material amendment of an oil and gas waste hauler permit. The check or money order should be made payable to "Treasurer, State of Texas." The following are not considered to be material amendments of an existing permit: addition or deletion of vehicles on the WH-2 and addition or deletion of an approved disposal/injection system on a WH-3.
- INITIAL PERMIT APPLICATION**
- File a Form P-5, Organization Report, along with appropriate financial security with the Commission in Austin.
 - File an original of each of the following forms with the Commission's Director of Environmental Services in Austin as soon as you have received your P-5 organization number:
 - Form WH-1: Application for Oil and Gas Waste Hauler's Permit.
 - Form WH-2: Oil and Gas Waste Hauler's List of Vehicles.
 - Form WH-3: Oil and Gas Waste Hauler's Authority to Use an Approved Disposal/Injection System.
 See General Instructions below.
- RENEWAL PROCEDURES** The Commission's Austin office will mail a renewal notice to you approximately 60 days before your permit expires. The notice will include a pre-printed Form WH-1, preliminary lists of approved vehicles and approved disposal/injection system, and instructions on the renewal process. See General Instruction below.
- GENERAL INSTRUCTIONS**
- When the completed application is approved, the original Form WH-1 will be returned to you and will serve as your permit. At the same time, you will receive Permit Attachment A (Waste Hauler Vehicle Identification) and Permit attachment B (Approved Disposal/Injection Systems). Each vehicle must carry a copy of the permit including those parts of the Commission-issued attachments listing approved vehicles and Commission-permitted disposal systems that are relevant to the vehicle's activities.
 - You must file a Form WH-3 with the Commission in Austin before using any system that is not shown on your current Permit Attachment B (Approved Disposal/Injection Systems). After the Form WH-3 is approved, you will be sent a revised Permit Attachment B with that system included.

FRANCHISE TAX CERTIFICATION: House Bill 175 (70th Legislature) states that a corporation may but be granted a permit unless it is current on Franchise Tax payment or is exempt from or not subject to the tax. A false certification will result in permit revocation.

OIL AND GAS WASTE HAULER'S PERMIT
(To be completed by the Commission)

Permit No. _____ is hereby issued to _____
subject to the conditions below.

PERMIT CONDITIONS

- A. This permit authority is limited to the hauling, handling and disposal of oil and gas waste off a lease, unit, or other oil and gas property.
- B. This permit authorizes the permitted hauler to dispose of oil and gas waste only at the following disposal/injection systems:
- Commission-permitted disposal/injection systems for which a Form WH-3 has been submitted and which are listed on Permit Attachment B (Approved Disposal/Injection Systems).
 - disposal systems operated under authority of a minor permit issued by the Commission; and
 - disposal systems permitted by another state agency or another state provided the Commission has granted separate authorization for the disposal.
- C. Each vehicle must be marked on both sides and in the rear with the permitted hauler's name (exactly as shown on the P-5 Organization Report) and permit number in characters not less than three inches high.
- D. This permit authorizes the permitted hauler to use only those vehicles shown on the Commission-issued listing of approved vehicles, Permit Attachment A (Waste Hauler Vehicle Identification).
- E. Each vehicle must carry a copy of this permit along with a copy of those parts of Permit Attachment A (Waste Hauler Vehicle Identification) and Permit Attachment B (Approved Disposal/Injection Systems) that are relevant to that vehicle's activities.
- F. Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation.
- G. The permitted hauler must make each vehicle available for inspection upon request by Commission personnel.
- H. The permitted hauler must compile and keep current a list of all persons by whom the permitted hauler is hired to haul and dispose of oil and gas waste and furnish such list to the Commission upon request.
- I. The permitted hauler must adequately train all drivers to ensure compliance with Commission rules, including record keeping requirements, and adherence to proper emergency response and notification procedures.
- J. The permitted hauler must keep a DAILY record of the oil and gas waste hauling operations of each approved vehicle. The daily record, signed and dated by the vehicle driver, must be kept open for Commission inspection and must contain the following information:
1. Identity of the property from which the oil and gas waste is hauled (operator name, lease name and number or other facility name or number, and county; and
 2. Type and volume of oil and gas waste received by the hauler at the property where it was generated;
 3. Identity of the disposal system to which the oil and gas waste is delivered (operator name, lease name and number or system name, well number or system permit number, and county); and
 4. Type and volume of oil and gas waste transported and delivered to the disposal system.
- K. This permit is not transferable without the consent of the Commission.
- L. This permit expires on _____. This permit, unless suspended or revoked for cause shown, will remain valid until the expiration date.

RRC Contact

Director of Environmental Services

Date of Permit Issuance

(512) 463- _____

Illegal Dumping Enforcement - 2024

219

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION
P.O. BOX 12967
AUSTIN, TX 78711-2967
ENVIRONMENTAL SERVICES

OIL AND GAS WASTE HAULER
VEHICLE IDENTIFICATION

PERMIT ATTACHMENT A

PAGE 1

Hauler Name	Permit Number	Expiration Date	Number of Vehicles
WASTE FACILITIES, INC.	3315	03/31/2014	38

Make	Model	Yr	Serial No.	Cap.	Unit	License	Inspected
BESTWAY		1997	1G9DP3626VH164018	22	CUYD	Z12229	
LUFKIN		1978	49308	22	CUYD	Y68965	
CHAMPION		1993	TP787606CCH1850041	22	CUYD	W03865	
REDRIVER		1999	4ZYBD4024X1000124	22	CUYD	30876Z	
LUFKIN		1979	S00575947	22	CUYD	314167	
PETERBILT		2000	1XP5D69X5YN499470	22	CUYD	2EL537	
KENWORTH		1996	1XKADB9XTJ1730245	22	CUYD	2BT982	
FRGHTLINER		1996	1FUY3EDBXTPT719585	22	CUYD	2EJ657	
PETERBILT		2000	1NP5DB9X1YD508819	22	CUYD	2EJ682	
KENWORTH		1990	2XKDD29XLM533531	22	CUYD	2CW735	
KENWORTH		1991	1XKAD29X4MS563751	22	CUYD	2FD826	
INTERNTL		1993	2HSFHL5R2PC071744	22	CUYD	74HKF2	
FRGHTLINER		1995	1FUYDZYB45P854378	22	CUYD	2FG502	
KENWORTH		1999	1XKDD99X4XJY92253	22	CUYD	2FF199	
INTL		2000	2HSCASR3YC033920	22	CUYD	2FG497	
INTL		2000	2HSFTAMR2YC037899	22	CUYD	2FG419	
INTL		2003	3H5KASR33N059279	22	CUYD	2FF146	
INTL		2000	2HSCAMR9YC058317	22	CUYD	2FF147	
INTL		2005	2HSCAPR45C015172	22	CUYD	2FF148	
WSTR		2005	2WKEDDXJ81K971166	22	CUYD	2FF149	
KENWORTH		2003	2XKADB9X3R896669	22	CUYD	2FF194	
INTL		2005	2HSCNAPR25C036286	22	CUYD	2FF198	
INTL		2005	2HSCNAPR65C047484	22	CUYD	2FF196	
INTL		2005	2HSCAPR25C047465	22	CUYD	2FF197	
INTL		2005	2HSCNAPR45C036239	22	CUYD	2EX813	
KENWORTH		1994	2XKWD9X5RM614797	22	CUYD	2FF195	
PETERBILT		1998	1XPGD99X2WN458124	22	CUYD	2EX700	
CPS		2003	4241116233PD04183	22	CUYD	785512	
CPS		2004	1C91140244S770605	22	CUYD	W09193	
CPS		2007	5MC1116227P007503	22	CUYD	5315Y	
CPS		2008	5MC1116208P009395	22	CUYD	X64603	
CPS		2009	5MC1116249P009790	22	CUYD	Y30123	
CPS		2008	5MC1116218P008756	22	CUYD	W40669	
CPS		2009	5TU1140268S001088	22	CUYD	Z00264	
CPS		2011	5TU114023C5000098	22	CUYD	Y88351	
CPS		2006	5MC1116217P008925	22	CUYD	Z00296	
CPS		2011	5MC114029BP012734	22	CUYD	Z00314	
CPS		2008	5MC1116228P008751	22	CUYD	Z00275	

A COPY OF THE PART OF THIS LISTING RELEVANT TO THAT VEHICLES ACTIVITIES MUST BE CARRIED IN EACH VEHICLE SUBJECT TO THIS PERMIT

RAILROAD COMMISSION OF TEXAS OIL AND GAS DIVISION P.O. BOX 12967 AUSTIN, TX 78711-2967 ENVIRONMENTAL SERVICES		OIL AND GAS WASTE HAULER APPROVED DISPOSAL INJECTION SYSTEMS		PERMIT ATTACHMENT B (FACILITY)	
PAGE 1					
Hauler Name	Permit Number	Permit Date	Expiration Date	District Number	
WASTE FACILITIES, INC.	3315	02/26/2013	03/31/2014	04	
System Operator Name					
Facility Name	District	County	Permit No.	LOA Date Expires	
WASTE FACILITIES, INC.					
CHERRY FACILITY	04	JIM WELLS	P-11167	02/23/2014	
NANO RANCH FACILITY	04	ZAPATA	P-10665		
PREMONT FACILITY	04	JIM WELLS	LT-78		
RANCHO NUEVO DISPOSAL FACILITY	04	DUVAL	P-11057	05/30/2017	
A COPY OF THE PART OF THIS LISTING RELEVANT TO THAT VEHICLES ACTIVITIES MUST BE CARRIED IN EACH VEHICLE SUBJECT TO THIS PERMIT					

The back of the first page shows many of the conditions under which the permit is issued. (See Permit Conditions Printed On Back of WH-1 Form below for easier reading) "Statewide Rule 8" contains all the conditions with which the holder must comply, but these printed on the WHP itself assures that the driver and anyone else handling the WHP knows the basic conditions that must be followed.

This page also shows the dates the WHP covers and the RRC signature stamp. Hauling outside this date range would constitute transporting oil and gas waste without a permit, a criminal violation. The WHP requires annual renewing; however, the RRC may occasionally get behind in its administrative work and there is a delay in renewing the WHP. When that happens the RRC will have provided the permit holder with documentation temporarily extending the expiration date.

Permit Attachment A shows the vehicles authorized to be operated under this WHP. This form shows the description of each "truck tank, trailer tank, vacuum tank, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the oil and gas waste hauler." Regardless of the markings on the trailer, if the trailer is not shown on this list of vehicles, it may not legally be used until it is added

by the RRC (not typed on the form by the permit holder).

Permit Attachment B shows the facilities to which the waste may be legally transported for disposal under this WHP. These are determined at the time of the original application by having each of the locations planned to be used to provide an affidavit to that effect. If a hauler is delivering waste to a location not shown on Attachment B, he is in violation of the WHP.

Since a copy of the complete WHP is required to be carried on each vehicle, there is considerable information readily available to an officer checking the hauler for compliance with the criminal provisions of TWC Chapter 29 and NRC Sec. 91.002 (details of both approaches are below).

Certifications Made in WH-1 Application Process

The WHP application process involves the making of three official certifications to the RRC: two from the applicant for the WHP, and one from each disposal system to be included in the permit. Should, upon investigation, any of these prove to be false, there may have been a violation of Penal Code Sec. 37.10 (Tampering with a Government Record) or the provisions of NRC Sec. 91.143 (False Applications, Reports, and Documents and Tampering with Gauges).

1. Certification by the applicant on the WH-1 APPLICATION FOR OIL AND GAS WASTE HAULER'S PERMIT:

"I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge. If the above-named hauler is a corporation, I further certify that it is either subject to and not delinquent on the State of Texas Franchise Tax or exempt from or not subject to the tax."

2. Certification by the applicant on the WH-2 OIL AND GAS WASTE HAULER'S LIST OF VEHICLES

"I certify that the vehicles listed on this form are designed so that they will not leak during transportation."

3. Certification from each disposal system planned for use by the permit holder on individual WH-3 OIL AND GAS WASTE HAULER'S AUTHORITY TO USE APPROVED DISPOSAL/INJECTION SYSTEM:

"I certify that the waste hauler named above is authorized to dispose of oil and gas waste at the systems identified on this form; that I am authorized to make this report; that the report was prepared by me or under my supervision and direction; and that the data and facts contained herein are true, correct and complete to the best of my knowledge."

Drivers are On Notice of the Hauling Permit Requirements

Permit conditions printed on back of WH-1 form required to be on the vehicle

- A. *This permit authority is limited to the hauling, handling and disposal of oil and gas waste off a lease, unit, or other oil and gas property.*
- B. *This permit authorizes the permitted hauler to dispose of oil and gas waste only at the following disposal/injection systems:*
 - *Commission-permitted disposal/injection systems for which a Form WH-3 has been submitted and which are listed on Permit Attachment B (Approved Disposal/Injection Systems);*
 - *disposal systems operated under authority of a minor permit issued by the Commission; and*
 - *disposal systems permitted by another state agency or another state provided the Commission has granted separate authorization for the disposal.*
- C. *Each vehicle must be marked on both sides and in the rear with the permitted hauler's name (exactly as shown on the P-5 Organization Report) and permit number in characters not less than three inches high.*
- D. *This permit authorizes the permitted hauler to use only those vehicles shown on the Commission-issued listing of approved vehicles, Permit Attachment A (Waste Hauler Vehicle Identification).*
- E. *Each vehicle must carry a copy of this permit along with a copy*

of those parts of Permit Attachment A (Waste Hauler Vehicle Identification) and Permit Attachment B (Approved Disposal/Injection Systems) that are relevant to that vehicle's activities.

- F. Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation.*
- G. The permitted hauler must make each vehicle available for inspection upon request by Commission personnel.*
- H. The permitted hauler must compile and keep current a list of all persons by whom the permitted hauler is hired to haul and dispose of oil and gas waste and furnish such list to the Commission upon request.*
- I. The permitted hauler must adequately train all drivers to ensure compliance with Commission rules, including record keeping requirements, and adherence to proper emergency response and notification procedures.*
- J. The permitted hauler must keep a DAILY record of the oil and gas waste hauling operations of each approved vehicle. The daily record, signed and dated by the vehicle driver, must be kept open for Commission inspection and must contain the following information:*
 - 1. Identity of the property from which the oil and gas waste is hauled (operator name, lease name and number or other facility name or number, and county; and*
 - 2. Type and volume of oil and gas waste received by the hauler at the property where it was generated;*
 - 3. Identity of the disposal system to which the oil and gas waste is delivered (operator name, lease name and number or system name, well number or system permit number, and county); and*
 - 4. Type and volume of oil and gas waste transported and delivered to the disposal system.*
- K. This permit is not transferable without the consent of the Commission.*
- L. This permit expires on ____ **WHP EXPIRATION DATE** _____. This permit, unless suspended or revoked for cause shown, will remain valid until the expiration date.*

These summarize the requirements for operating in compliance with a WHP issued by the Railroad Commission. Permit holders and drivers have these in their possession and are thus aware of these specific requirements. Sections A through F can easily be enforced at roadside. Any violation of these is a violation of “Statewide Rule 8” and, therefore, a criminal violation of NRC Sec. 91.002.

What Could Be Wrong with a Waste Hauler’s Permit?

The WHP on a particular vehicle hauling oil and gas waste for disposal off-site being investigated may be:

1. **Perfectly fine; nothing is wrong.** The WHP could be completely valid and properly permitting the activity being investigated. The paperwork is in good order so the officer can deal with the situation that generated the investigation. Hopefully, most of the WHP’s encountered in the field will be in this category; or,
2. **Missing** from the vehicle, but valid and in-force for the activity being investigated. The driver may say that the WHP is in the hauler’s office and proposes that the office will “hot shot” the WHP to the scene of the investigation. Some jurisdictions may allow this; others just issue the citations necessary for hauling oil and gas waste without a permit and let the court sort things out later. This second approach adds an inconvenience to a holder of a valid permit that may be sufficient to cause him to start following the law (i.e., making sure a copy of the WHP is on every authorized hauling vehicle); or,
3. **Not valid** because it is not in compliance with one of the requirements printed on the back of the first page, including simply being missing from the vehicle; being out of date; or for some other vehicle; or,
4. **Forged**; the WHP shows evidence of having been **physically altered without RRC authorization**. In this case the WHP is not valid (i.e., expiration date changed; vehicle added to Permit Attachment A; waste disposal site added to Permit Attachment B, etc.). In this case the officer and prosecutor may want to

deal with the probable document felonies (probably under the Penal Code for familiarity) as well as the waste hauling violations themselves.

Vehicle stops that begin with a missing WHP number and/or permit holder name from the sides and back of a vehicle may easily progress into other violations when the WHP is itself investigated and the officer correlates the vehicle with the WHP being carried on-board.

To assist officers and other users, a list of the companies, associations, and individuals holding valid WHPs is located on the RRC web-site at <https://tinyurl.com/wvznkzfk>. This site — “Permitted Oil & Gas Waste Haulers” — provides immediate access to the RRC data base for each RRC District. There you can verify that the particular WHP being worked is valid. Checking this list online at the time of the vehicle stop will quickly verify that the WHP is in force or not and verify the name and address of the holder.

The **expiration date** for the WHP (at the bottom of the page marked “Permit Conditions”) should be the same as the date on the RRC online file. If these don’t match, we recommend that the officer call the RRC office listed on the face of the WHP to determine if (1) the WHP is valid, but the online system is in error for some reason (and small errors creep into all information systems); or (2) the WHP the officer is verifying is invalid. If the WHP carried on the vehicle is invalid, then the driver is hauling oil and gas waste without a permit, a violation of TWC Sec. 29.041 and/or NRC Sec. 91.002.

At the bottom of the RRC WHP District listing on their web site, there is a link to all Commercial Surface Disposal Facilities currently authorized by the RRC to operate in the state. For most of these surface disposal facilities, there is a more detailed link to the actual permit issued by the RRC. If you are wondering about what has been permitted for land farming at a particular location, for instance, the RRC has made it very easy for you to access the information you are seeking.

SPECIFIC CRIMINAL LAWS AVAILABLE FOR LOCAL USE**1. TWC Chapter 29 Oil and Gas Waste Haulers**

The violations in this statute are the most common that local officers are likely to encounter, and the criminal sections of this law are frequently used to deal with oil and gas waste.

These statutes allow the officer to focus on the problem vehicle and driver, to arrest the driver if appropriate, and to impound the vehicle as evidence until the matter is resolved, usually after having the permit-holding company remove the rest of the load for proper disposal.

If the permit holder sends a second vehicle to clean the dumped oil and gas waste — or sends a second vehicle to off-load the waste from an impounded vehicle — make sure these second vehicles are operating under a proper WHP also.

These provisions deal with very commonly observed violations: unmarked or improperly marked vehicles transporting oil and gas waste; hauling oil and gas waste without a permit; dumping and spilling-and-abandoning oil and gas waste on streets and in other unauthorized locations; and, using a hauler who does not hold a valid WHP. The same criminal penalty applies to each of these.

The individual vehicle involved in the violation may not be the only such vehicle operated by the permit holder. That is, if this particular vehicle is unmarked or leaking, why would anyone expect the entire fleet of vehicles operated by the permit holder to be free of similar violations? Officers enforcing these laws are encouraged to maintain sufficient records concerning violators so that they can identify patterns. If you find yourself dealing with the same company for related problems on different vehicles, it may be time to focus on the company itself rather than an individual vehicle.

The starting place for local enforcement against oil and gas waste haulers who illegally transport and/or dump their loads or abandon spills is TWC Chapter 29. After the officer has gained mastery in using TWC Chapter 29, moving on into the use of NRC 91.002 for violations of “Statewide Rule 8” should present no problems.

The following specific criminal provisions of TWC Chapter 29 are useful in dealing with lone offending vehicles and drivers:

Texas Water Code Chapter 29 OIL AND GAS WASTE HAULERS

TWC Sec. 29.041 HAULING WITHOUT PERMIT.

No hauler may haul or dispose of oil and gas waste off the lease, unit, or other oil or gas property where it is generated unless the hauler has a permit issued under this chapter.

TWC Sec. 29.042. EXCEPTIONS.

(a) A person may haul oil and gas waste for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

(b) The commission by rule may except from the permitting requirements of this chapter specific categories of oil and gas waste other than saltwater.

TWC Sec. 29.043. USING HAULERS WITHOUT PERMIT.

No person may knowingly utilize the services of a hauler to haul or dispose of oil and gas waste off the lease, unit, or other oil or gas property where it is generated if the hauler does not have a permit as required under this chapter.

This provision is particularly interesting since it establishes a violation simply to use an unpermitted hauler. Moreover, “Statewide Rule 8” requires that the generator and receiver of the waste — the oil or gas production well and the waste injection well or landfarming site — actively determine that the waste hauler has a WHP permit.

TWC Sec. 29.044. DISPOSING OF OIL AND GAS WASTE.

(a) No hauler may dispose of oil and gas waste on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal facility without written authority from the railroad commission.

When oil and gas waste is spilled and then abandoned by the driver — or the waste is dumped on a street or on other public or private property other than a RRC-approved disposal facility — this is the provision commonly cited by local officers. Note that it is a violation of “Statewide Rule 8” to transport oil and gas waste in a vehicle that leaks [see

Sec. (f)(1)(c)(ix)]. When officers enforce NRC Sec. 91.002, the fact that the vehicle was operated in such a manner that it leaked can be the basis for additional criminal fines (maximum: \$10,000 per violation).

(b) No hauler may dispose of oil and gas waste on property of another in other than a railroad commission-approved disposal facility without the written authority of the landowner.

This violation would cover such situations as when used drilling mud was being land farmed, but, on investigation of a complaint, the landowner had not given his written permission for this to take place. Perhaps an employee of an absentee landowner was allowing landfarming without the owner's permission to make illicit money.

TWC Sec. 29.045 USE OF UNMARKED VEHICLES.

No person who is required to have a permit under this chapter may haul oil and gas waste in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

This very noticeable violation is the beginning point of many cases. Closer check of the on-board WHP may show other criminal violations.

TWC Sec. 29.046 PENALTY.

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than 10 days or by both.

2. Texas Natural Resources Code Chapter 91

This is the second group of criminal provisions created by the State Legislature. NRC Chapter 91 has four criminal provisions; however, two are of such technical complexity that their enforcement is not likely to happen by local law enforcement. They involve the illegal use of saltwater evaporation pits (NRC Sections 91.452 and 91.457).

Violating a Waste Handling Code, Rule, Order, or Permit

This is the criminal section of NRC Chapter 91 most likely to be used by local law enforcement. Very likely, officers will begin to use this section when (a) the provisions of TWC Chapter 29 don't produce the desired results; (b) the target moves from being the individual violating vehicle to being a violating WHP holder as an entity; and (c) when local authorities grow in sophistication and working with district RRC offices becomes more standard. However, a fourth reason to use this provision rather than TWC Chapter 29 is that it is simply easier and allows judges to assess fines more in proportion to the economic value of the violation.

Under NRC Sec. 91.002, the crime is stated in paragraph (a). "Statewide Rule 8" — Title 16 T.A.C. Sec. 3.8 — *is* a rule issued under Section 91.101 of the Natural Resources Code [see Preface to the issuance of this rule in the [Texas Register](#), Aug 27, 2004 to verify this link]. Consequently, a violation of "Statewide Rule 8" would be included in the violations possible in Sec. 91.002(a).

NRC Sec. 91.002. CRIMINAL PENALTY.

- (a) A person who wilfully or with criminal negligence violates Section 91.101 of this code or a rule, order, or permit of the commission issued under that section commits an offense.*
- (b) An offense under Subsection (a) of this section is punishable by a fine of not more than \$10,000 a day for each day a violation is committed.*
- (c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.*

If a requirement named in "Statewide Rule 8" is violated — including any of the four violations listed in TWC Chapter 29 — local officers may use NRC Sec. 91.002, if that is local policy, to identify and file the charges. Since there is no possible jail time involved for conviction, because of the size of potential fines these cases are normally filed with the County Attorney.

So generally, is it better to use TWC 29 or NRC 91.002?

This is a question that depends on what the local government is trying to accomplish with its enforcement program.

Many local governments ignore their criminal enforcement responsibilities when oil and gas waste is involved. Sometimes this is done out of thinking that the industry itself does not want these laws applied to the waste-hauling companies. This is incorrect.

In other cases, this happens because local officers simply do not know the laws that they can use to stop illegal hauling and disposal of produced water.

Many cities and counties simply have not yet taken responsibility for protecting the water their citizens and businesses depend on, even though state criminal laws provide the tools for the job.

A local government may decide to use TWC Chapter 29 for routine enforcement of the basic oil and gas waste transportation laws for ease of use by the officer. Ticketing, arresting a driver and impounding the vehicle involved in the violation will certainly exert more pressure on the permit holder than a small fine.

On the other hand, if a particular permit holder regularly violated TWC Chapter 29, the jurisdiction may decide to apply the larger penalties in NRC Chapter 91, especially given the fact that there are often multiple violations of the WHP happening in these situations. Potential fines can become large.

Nor should local governments overlook the possible use of Penal Code Sections Sec.37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE and/or Sec.37.10. TAMPERING WITH GOVERNMENTAL RECORD where the Waste Hauling Permit has been altered by the permit holder.

There's also the possibility that vehicles capable of leaking oil and gas waste in transit were purposefully included in the WH-2 vehicle list submitted to the RRC as part of the WHP application. The WH-2 list of vehicles was certified by the applicant as being designed to be leak-free: "I certify that the vehicles listed on this form are designed so that

they will not leak during transportation.” But perhaps that certification was falsely made.

Given the number of haulers and the number of vehicles involved, RRC staff cannot possibly personally inspect each vehicle submitted in the application to make sure that the vehicle isn’t designed in such a way as to leak. Requiring a certification on the application to this effect is the best approach. However, proving that such a false certification was filed will probably be time consuming to local officers, although a subject to be discussed if the county finds itself dealing with multiple leaking vehicles from the same permit holder.

*NRC Sec. 91.143: Various Paperwork and **Gauge Tampering***

This is a second criminal section of NRC Chapter 91 (other than hauling violations) that local officers might occasionally need. This felony can be charged when a person steals power equipment or other gear from a well that has the effect of stopping the gauges at the well from operating. This section is also used by the RRC to administratively enforce document violations in the various filings that agency requires. In theory, local law enforcement could charge a criminal violation of this provision when they encounter a counterfeit or altered Waste Hauler Permit. However, it is more likely that the officer would simply charge a violation of the Penal Code in this circumstance.

See paragraph (a)(5) below for the violation concerning gauges.

Sec. 91.143. FALSE APPLICATIONS, REPORTS, AND DOCUMENTS AND TAMPERING WITH GAUGES.

(a) A person may not:

- (1) make or subscribe any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;*
- (2) aid or assist in, or procure, counsel, or advise the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter;*

(3) knowingly simulate or falsely or fraudulently execute or sign such an application, report, or other document;

(4) knowingly procure these applications, reports, or other documents to be falsely or fraudulently executed, or advise, aid in, or connive at this execution; or

(5) knowingly render inaccurate any monitoring device required to be maintained by a commission rule, order, or permit.

(b) A person commits an offense if the person violates this section. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not less than two years or more than five years;

(2) a fine of not more than \$10,000; or

(3) both the imprisonment and the fine.

(c) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.

(d) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.

(e) The commission may impose an administrative penalty in the manner provided by Sections 81.0531-81.0534 on a person who violates this section. The amount of the penalty may not exceed \$1,000 for each violation.

As to using this section to respond to theft affecting gauges, one chief of security for an operator in the Ft. Worth area reports successfully persuading local law enforcement there to use this provision. A person was stealing batteries from remote well sites, thereby rendering the gauges at those sites “inaccurate.” An arrest was made, and the individual was charged with a violation of NRC Sec. 91.143(a)(5), which carries a potential penalty of 2 to 5 years confinement and/or a fine of \$10,000, rather than misdemeanor theft of the batteries.

3. THSC Chapter 365 Illegal Dumping

We can't use THSC Chapter 365 for oil and gas waste dumping.

As mentioned in *Chapter 10: Primary Illegal Dumping Enforcement*, the Texas Litter Abatement Act — THSC Chapter 365 — cannot be used to deal with *oil and gas waste*; this type of waste is specifically excluded from the definitions of *solid waste* that is used in this law:

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

Since Section 91.101 of the Natural Resources Code defines oil and gas waste, those sorts of waste are effectively removed from the Texas Litter Abatement Act.

At the same time, the Litter Abatement Act is the most widely used Texas criminal law to fight general illegal dumping. You will recall that this law sets misdemeanor to state jail felony penalties for disposing, receiving for disposal, and transporting for disposal any *litter* or *solid waste*, if the disposal location involved has not been approved by the State for that purpose.

Although the Litter Abatement Act does not apply to *oil and gas waste*, it does apply to virtually all other kinds of disposed items. Check the definitions of *litter* and *solid waste* used in this law to be sure the waste you're seeing fits within the scope of these definitions. For example, *solid waste* and *litter* illegally disposed by residents and owners of “man-camps” can generally be controlled by use of this law.

Additionally, if you find a “black, oily substance” dumped somewhere that may later turn out to be oil and gas waste, consider using THSC Chapter 365 and simply charge illegal dumping. If a defendant's attorney later challenges the use of the Litter Abatement Act on the grounds that the dumped material is actually oil and gas waste and, therefore, not covered by the Litter Abatement Act, all the better. You can then proceed to use NRC Sec. 91.002 (and/or TWC Chapter 29) to

deal with waste that now is properly identified. It's ironic that the use of these two laws might result in a greater penalty being imposed than would using THSC Chapter 365, but sometimes things work out that way.

However, sometimes the situation is ambiguous. One would think that THSC Chapter 365 could be useful in dealing with *common trash* generated from the exploration and production business. This can be a confusing situation since the common trash generated at well drilling and production sites is technically classified as oil and gas waste.

For example, if a drilling company has hired a trash hauler to remove trash and garbage generated by people living and working at the well site — which are included in the definition of oil and gas waste — and this waste is illegally dumped in a field someplace, the problem is probably with the contracted waste hauler rather than the drilling company or operator. Usually, these haulers are subject to THSC Chapter 365 when they illegally dump. But in this case at least part of the trash they dumped is classified as oil and gas waste. We suggest using THSC Chapter 365 to treat all the dumped material as solid waste under that law until directed to do otherwise by your prosecutor.

Trash that began life as oil and gas waste at a well site becomes *special waste* (a type of solid waste) “when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ” (see the Memorandum of Understanding between the TCEQ and the RRC at section d.1., cited above. This MoU reflects the decision of the State Legislature regarding the waste management responsibilities of the two agencies). However, there's no indication of when this transformation from *oil and gas waste* to *special waste* takes place that I can find. As soon as the trash is placed in a dumpster at the well site by a trash hauler? As soon as the waste leaves the well site? Not specified.

Moreover, since the trash hauler is carrying oil and gas waste when he leaves the drilling site, shouldn't he be proceeding under a Waste Hauler's Permit? I can find no record of such a WHP having been issued to a trash hauler, although I do know that several have approached the agency without success.

A good example of waste definition ambiguity recently arose in a small town near Houston. The items dumped were several large tanks used to store oil at a well site before it was collected for use. The well owner had needed new tanks, so he just rolled these old ones down near the water's edge — the Houston Ship Channel — and left them on their side, with residue of stored oil still intact. Any storm would have resulted in the tanks, or their residual oil, winding up in the Channel. The city discovered the situation and was trying to deal with it.

The question immediately became, *"Forgetting about the oil residue for a moment, what kind of waste are the old tanks themselves, since that determines the law that can be used to deal with it?"* Are they *oil and gas waste* or *litter* or *solid waste*, as defined in various state laws? If they are *litter* or *solid waste*, the city could use the Litter Abatement Act; but if they are *oil and gas waste*, the city couldn't use that particular law.

The officer noted that the definition of oil and gas waste at NRC Sec. 91.1011(a)(6) included waste from *"activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel."* This would certainly include storing crude oil just produced.

Just to be sure, however, the officer asked a field inspector from the RRC to come take a look, and a couple of them did. According to the city employee, the officers acknowledged that the tanks probably met the definition the municipal officer was citing and were, in fact, good examples of non-liquid oil and gas waste. However, and this may have been those officers dealing with their large work loads, the field inspectors declined to get involved, saying that they were currently focusing exclusively on liquid oil and gas waste mishandling.

The distinction between liquid and non-liquid oil and gas waste does not occur in state law anywhere I can find, and certainly not in the main statutes covering oil and gas waste.

That put the municipal officer in a slightly difficult position, since the RRC's non-response to this *"non-liquid oil and gas waste"* didn't magically transform the tanks into *solid waste*, thereby clearing the way

to use the Texas Litter Abatement Act. The tanks were probably still *oil and gas waste*, so what to do?

Remembering that the felony water pollution statute — TWC Sec. 7.145 — covers virtually all forms of *wastes* and *pollutants* dumped into or adjacent to water, including what may or may not be oil and gas waste, the municipal officer decided to use that water pollution laws to deal with the problem.

When the officer and a policeman contacted the owner of the tanks, they were able to cite the felony law that the city would be using to force compliance if it was not gained voluntarily. Faced with the option — having to defend being charged with multiple felony violations of the water pollution laws — the owner immediately cleaned the site to the officer's satisfaction. This worked as well as it did because the municipal officer took the time to classify the waste properly before proceeding. Maybe the city should have saved time and immediately imposed the water pollution law? I'd imagine they will if this happen again.

There are at least three issues raised by this story:

1. At the time the field inspectors declared that the tanks were *non-liquid oil and gas waste*, but that they supposedly "were not working on that sort of thing," the municipal officer didn't think that sounded exactly right. However, the path toward a solution the municipal officer took was to find another law to use, not to argue with the field inspectors, call the RRC district office, or escalate the question to the RRC headquarters in Austin. There's no telling why the field inspectors reached the decision they did; it was probably just a simple error over agency policy. After all, when 150-or-so field inspectors are making over 125,000 inspections a year — as the RRC reported happen most years — a few mistakes are bound to creep into the system occasionally. Moreover, in any large organization, policies don't always make it out to the end of the chain of command when issued at the top. I'm sure that the RRC is focusing on educating its field investigators every day.

2. The second issue this story raises is the value of ongoing education of local police and code officers. Because the municipal officer was aware of the power the city had to investigate the dumped tanks as a case of criminal water pollution, an alternative solution was quickly found. Knowing one's exact enforcement options is always empowering.
3. The third issue has to do with the action of the owner of the tanks. The municipal officer reported that trying to get this person's attention had been difficult. However, when the police showed up and began to talk of possible criminal law enforcement, the person decided that the time had come to act, and he "voluntarily" cleaned up. There's nothing surprising about this. Once the local police began to understand that the dumping probably constituted felony water pollution, things were quickly resolved. Non-criminals will generally avoid being charged with a felony if there is any option, as there was in this case.

4. THSC Chapters 341 and 343 Health and Nuisance Laws

When faced with a sanitation issue at the drilling site or small-scale illegal dumping of general trash, officers might want to use one of these two laws in response: Texas Health and Safety Code Chapter 341 and THSC Chapter 343. Both deal with general health and Public Nuisances. The difference is:

Chapter 341 is applicable everywhere in Texas, including the agricultural land where drilling often takes place; but,

Chapter 343 is restricted to the unincorporated areas of the state (and not all of those, and never agricultural land, where drilling often happens).

Focusing on THSC Chapter 341 for a moment, if the driller or well operator creating a Public Health Nuisance will simply fix the problem as soon as he learns of it, all would be well. But not everybody works that way; somebody always wants to argue that the law doesn't apply to them. These two laws — and especially THSC Chapter 341 — can be enforced locally and will have three impacts: (1) the violator will

have to stop creating the Public Health Nuisance; (2) time will have to be spent abating the mess; and (3) the violator will have to spend some time in JP court fighting the charge.

The potential to cost the operator or service company in time (rather than a little money) is often the greatest threat to him, so, once the violator understands his attention will be diverted to dealing with these nuisances, he will probably comply with these laws and change his future behavior pretty quickly.

County Designated Representative

Many counties have an employee working on sewage disposal issues who is designated as the “Designated Representative” of the TCEQ. He or she is a county employee, but is representing the TCEQ, and thus is subject to any legal restrictions that might be on the agency.

A potential problem arises around the duties of this individual when he or she attempts to enforce THSC Chapter 366 (regulating onsite sewage systems) as the Designated Representative at well sites. The problem with using the DR at well sites is the fact that the State Legislature has appointed the RRC as the party to manage *oil and gas waste* (including sewage generated at drilling sites); the TCEQ has no immediate role in this process at well sites. Consequently, a county attempting to use a DR to enforce sewage sanitation at well sites has no jurisdiction.

I know of one situation where DR was asked to leave a site by a RRC inspector on the grounds that the RRC had jurisdiction. So, how can this problem be solved, since ignoring Public Health Nuisance violations at well sites is not in anybody’s interest (including the guys that forced to work in needlessly unsanitary conditions)?

The easiest solution — which certainly has to be discussed with your local county attorney — is to (1) use a County Health Department (if you have one) employee who is not a DR to enforce THSC Chapter 341 Public Health Nuisance laws at the well site; or, (2) for the county to appoint a person to work at the direction of the Local Health Authority, as provided for in THSC Sec. 121.003(c).

If the only health professional available in a county is already being used as the DR, perhaps that person could wear a “second hat” from time-to-time as the local health authority’s eyes-and-ears at well sites to enforce THSC Chapter 341.

Your local county attorney will be able to quickly determine if this can happen within the constraints of the county’s participation in the TCEQ’s DR program. There are probably other ways to work around the DR’s restriction, but this one immediately comes to mind. The solution certainly is not to simply ignore the enforcement of Texas Public Health Nuisance laws at well sites.

Of course, the easiest solution by far is simply to teach local deputies, constables, T.C.O.L.E. certified fire marshals, and police enough of THSC Chapter 341 — and we recommend simply using Sec. 341.013(c) for most Public Health Nuisance violations — so that these peace officers can deal with these violations when they occur at wells. This is a criminal law and is certainly enforced throughout the state by peace officers, with or without the simultaneous enforcement activities of a local health department. So, one good option is to just use law enforcement to deal with THSC Chapter 341 violations.

There are certainly enough of these violations to go around, and when a peace officer observes a violation of THSC Sec. 341.013(c), he or she can simply respond. There’s no need to call the health department unless an immediate abatement is needed [not something the police can order as only the local health authority can act under THSC Sec. 341.012 (b)-(d)].

Once the violator understands that the peace officer, county health department officer, or local health authority representative has the power to enforce these laws, rapid compliance generally should be expected. People managing oil and gas drilling operations certainly have better things to do than spend their time in JP court explaining to the judge how they should be considered exempt from state laws protecting public health.

Moreover, if one is doing business in Texas, is there really any such thing as being charged or convicted with a “minor” criminal violation? If a Public Health Nuisance at a drilling site or anywhere else has

deteriorated to the point that issuing a citation is the officer's next step, he or she can expect high levels of cooperation from the drilling contractor and the operator to resolve the issue.

5. TWC Chapter 7 (Subchapter E)

Texas Water Code Chapter 7 (Subchapter E) contains around 40 criminal environmental laws that protect our land, air, and water resources. They all apply to the oil and gas exploration and production sector of the Texas economy just like they apply to dry cleaners, liquor store operators, and farmers and ranchers. These laws apply to individuals as well as companies, associations, and other forms of organization. The fines set by the State Legislature for violating many of these are the highest fines found in state law; moreover, individuals can expect significant confinement time for many of these violations too.

Water Pollution

If *any* kind of waste — including *municipal solid waste* and *other waste (which includes various forms of oil and gas waste)* — is intentionally or knowingly discharged into or adjacent to “water” (including dry creek beds) without a permit to make the discharge, a criminal violation has taken place. There are two laws available to deal with this, one providing for felony-level punishment — Texas Water Code Sec. 7.145 — and the other providing for misdemeanor punishment — TWC Sec. 7.147. Both are discussed at length in *Chapter 12 Water Pollution and Special Violations*.

Although discharging oil and gas waste into or adjacent to water may also be a violation of TWC chapter 29 and NRC Sec. 91.002, the much higher potential penalties for felony and misdemeanor water pollution may make these laws more useful. Hauling oil and gas waste is a very lucrative business, and the financial temptations to take shortcuts can be very large. Whenever possible, consider pushing for penalties that approximate the economic value of the crime.

Each day a waste or pollutant has been left in or adjacent to water, thereby polluting or risking pollution of that water, is a separate offense under TWC Secs. 7.145 and 7.147. The maximum penalty for a non-

individual violator is a fine of up to \$250,000 per day in the case of TWC Sec. 7.145 and of up to \$100,000 per day in the case off TWC Sec. 7.147.

Illegal Outdoor Burning

Occasionally workers may decide to burn general waste at a well site. Generally, commercially generated waste cannot be routinely burned without TCEQ specific approval. If this burning is done without a permit (including a “permit by rule” — “if you follow the rule, you have a permit”), a criminal violation may occur, either at the misdemeanor or felony level.

Misdemeanor outdoor burning can result in a fine of \$1,000 to \$50,000 and/or 180 days in jail. Misdemeanor burning violations are the most common violations and usually arise when a person violates the Texas Outdoor Burning Rule, which is found at 30 Texas Administrative Code Sec. 111 (Subchapter B).

Felony illegal outdoor burning can have massive penalties — \$1,000 minimum to \$500,000 — and imprisonment of up to five (5) years for an individual violator. Corporate violators are fined at a higher rate.

Felony outdoor burning is addressed by two statutes: TWC Sec. 7.182 and TWC Sec. 7.183. If an un-permitted emission of smoke, fumes or any other *air contaminant* (as defined in THSC Chapter 382 Texas Clean Air Act) puts another person in “*imminent danger of death or serious bodily injury*,” a felony air violation may have taken place. If the emission of the air contaminant was done in a reckless manner with no intention of the victim being harmed, then the lesser charge of TWC Sec. 7.182 is used, and the maximum fine for an individual is \$250,000. On the other hand, if the emission of the air contaminant was done in an intentional or knowing manner, with the additional element that the burner knowingly harmed the victim, then the proper charge is TWC Sec. 7.183, and the \$500,000 maximum fine would apply. In each case, if the victim dies, the maximum penalty is even greater. See *Chapter 14 Illegal Outdoor Burning* for detailed information on this subject.

Other TWC Chapter 7 (Subchapter E) Violations

Altogether, there are over forty additional criminal environmental violations found in TWC Chapter 7 (Subchapter E). The ones most likely to be violated by a generator, carrier, or receiver of *oil and gas waste* are the two water pollution violations indicated above. However, other statutes that may be violated by this industry include dumping lead-acid batteries — each improperly disposed lead-acid battery is a Class A misdemeanor (TWC Sec. 7.185) — or mishandling or dumping used motor oil — penalties run from a fine of \$1,000 to \$50,000 and/or five years confinement (TWC Sec. 7.176) — or dumping scrap tires — often handled as a Public Health Nuisance at a rate of a fine to \$200 per day the tires remain dumped.

6. TWC Chapter 11 Water Rights

Producing gas and oil from shale deposits often requires hydraulic fracturing of the formations in which the gas and oil are held. Or as a friend once informed me, *“When you drill a hole in shale, it’s like drilling a hole in a bowling ball: when you take out the drill, nothing comes out. You have to fracture the formation before the oil and gas will flow.”*

Hydraulic fracturing is nothing new, however. It has been around since Kansas in 1947, but it wasn’t used on a large scale until 1997 in the Barnett Shale gas area in North Texas. Now this technique is the normal approach to greater resource recovery: approximately 70% of all gas and oil wells drilled in the United States used hydraulic fracturing, and in some states as many as 90% of new wells over the coming decade will use the process. (*Hydraulically fractured horizontal wells account for most new oil and natural gas wells.* Today in Energy. U.S. Energy Information Administration. <https://tinyurl.com/4c6e4k36>).

Hydraulic fracturing is an emotional topic, and wild assertions about its effects can be heard on all sides. So, if you want to know more about the process, you need to be aware of any potential bias held by the providers of the information. The EPA released a good study of the process a couple of years ago “Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources,” and you can access it at <http://epa.gov/hfstudy/>. This is a nice piece of work, and you can learn a lot about the process by reading this study and looking at the

illustrations in that study.

What is beyond dispute, at least currently, is that this process uses a lot of water. This common well completion process uses 3 to 10 million gallons of water mixed with sand and chemicals in fracturing each new well drilled. These chemicals and sand are called “proppants” because they stay behind to prop open the small fractures in the formation caused by the process, thereby allowing the oil or gas to escape. Not all the fluids pumped down the well are immediately recovered, but a fair amount is (the EPA studies show initial fluid flowback recovery of 15% to 80% — which is a very wide range). No doubt, some of the produced saltwater that is extracted later with the oil and gas is mixed with fracking flowback too — most of which eventually winds-up in an injection/disposal well.

Note, however, the TCEQ’s dancing around giving permission for discharging some amount of produced water into rivers rather than always requiring the use of injection wells. West Texas is considered a seismically active area, the largest earthquake in modern times being a 5.8 magnitude quake near Valentine in 1931. But smaller and more frequent earthquakes in the Permian Basin are thought by many, including the U.S. Geological Survey, to be related to pumping millions of gallons of water into deep formations.

Increased drilling activity not only results in the need for more injection/disposal wells for waste fluids, but also puts enormous pressures on the availability of water for other uses.

The provisions governing the use of state water are found at Texas Water Code Sec. 7.142, which sets various criminal penalties for violating different parts of Texas Water Code Chapter 11 WATER RIGHTS.

The beginning point in using state water is that most uses require a permit issued by the TCEQ. A few examples of how TWC Sec. 7.142 works with TWC Chapter 11 to set penalties are:

Violation of TWC Sec. 11.081 - Unlawful use of state water that results from appropriating state water without complying with Chapter 11; carries a fine to \$1,000 and/or jail to 180 days;

Violation of TWC Sec. 11.083 - Other unlawful taking such as diverting water onto one's own land without being entitled to do as defined in Chapter 11; carries a fine to \$1,000 and/or jail to 180 days;

Violation of TWC Sec. 11.084 - Selling a permanent water right without having obtained a permit from the TCEQ to do so; carries a fine to \$1,000 and/or jail to one year;

Violation of TWC Sec. 11.088 - Destruction of a waterway owned by another or in which another has a property right ... or simply opening a gate to make an unauthorized entry to the property ... to steal water from a waterway; carries a fine to \$1,000 and confinement to two (2) years (a felony).

Note: This is the major offense in TWC Chapter 11. It focuses on breaking into someone's property for the purpose of stealing water or damaging water works in some manner.

If you observe a person pumping water from a stream or lake, unless the person has a permit from the TCEQ to use this water or has purchased the water from a permitted seller, you may well be observing a criminal violation of TWC Chapter 11.

On the other hand, if you see a person pumping anything into a stream, lake, creek, borrow ditch, or dry water course without a TCEQ permit, you're probably seeing a case of felony (TWC Sec. 7.145) or misdemeanor (TWC Sec. 7.147) water pollution. Seeing any private sector truck interacting with surface water should set off alarms in the officer's head and result in an immediate investigation.

Stealing water can be a felony; polluting water is too.

But both criminal violations will need to be understood and enforced by local law enforcement officers for these practices to stop.

The overall key in dealing effectively with oil and gas waste mis-handling and dumping is knowledge. The more that officers learn about the content of "Statewide Rule 8" and the other laws described in this chapter and related chapters, the more effective they will be.

TEN QUESTIONS AND ANSWERS ABOUT OIL AND GAS WASTE

1. *Isn't it the Railroad Commission's job to respond to oil and gas waste dumping and mishandling?*

The RRC responds to oil and gas waste hauling violations administratively; only local law enforcement can respond to these same violations criminally.

2. *Can local governments enforce criminal laws against persons with a Waste Hauler's Permit?*

Sure. Local governments have primary response authority within their jurisdictions for most criminal violations, regardless of whether a person holds a state permit or not.

3. *What are the easiest criminal laws for local governments to use to deal with oil and gas waste?*

Texas Water Code Chapter 29 can be used to deal with most visible violations by both permitted and unpermitted *oil and gas waste* haulers (such as dumping on streets and using unmarked vehicle).

Texas Natural Resources Code Sec. 91.002 can be used if the person is violating a rule contained in "Statewide Rule 8," including all the criminal provisions found in TWC Chapter 29. Because of the higher fines and easier processing, many jurisdictions use NRC Sec. 91.002 violations rather than TWC Chapter 29.

Texas Health and Safety Code Sec. 341.013(c) can be used to deal with Public Health Nuisances everywhere in the state, for all industries and types of waste, including those generated or maintained by oil and gas operators and service companies.

Texas Water Code Sec. 7.145 and Sec. 7.147 can be used if the oil and gas waste is dumped into or adjacent to water. These water pollution violations carry very high potential penalties.

TWC Sec. 7.182 and 7.183 can be used to deal with felony illegal burning.

TWC Sec. 7.177(a)(5) can be used to deal with misdemeanor illegal burning. This section is the criminal violation used when the underlying act is a violation of the Texas Outdoor Burning Rule.

TWC Sec. 7.199 allows for any fine assessed against a non-individual to also be entered as a civil judgment against the person, enforced as any other judgment.

4. *Does the Railroad Commission have to give its permission for local governments to act?*

No. The RRC does its thing administratively and civilly, and local government does its thing criminally. In fact, early attempts at coordinated enforcement between the agency and local police have generally not worked, most likely because of different policy aims.

5. *Why can't local government use the same law it does to stop general illegal dumping?*

Because the State Legislature says it can't. Special laws are used to deal with dumping oil and gas waste, including those listed in #3.

6. *Can local governments use other general anti-pollution laws to control oil and gas waste?*

Officers can use many of the general environmental criminal laws to respond to *oil and gas waste* issues. Additionally, municipal codes can control many above-ground operations in and around drilling sites inside their city limit.

7. *Why isn't the TCEQ acting to control oil and gas waste in our community?*

The State Legislature has specifically assigned that task to the Railroad Commission ... and to local governments (using criminal law). The role of the TCEQ in dealing with the oil and gas industry is limited to regulating air emissions.

8. *We're smart people here in our local government; why have we never heard of our enforcement powers?*

Environmental criminal laws are almost never covered in law enforcement academies, so the peace officers trained in these academies are generally unaware of the state criminal laws protecting our air, land, and water resources. The same situation exists in Texas law schools, where most of our criminal prosecutors are trained.

This general lack of training can result in a situation where several local officials find themselves agreeing with each other (incorrectly) that “This is a state problem; there’s nothing we can do.”

9. *Doesn’t local criminal enforcement of laws against oil and gas waste make the industry mad?*

No. Just the opposite. Virtually all handling, hauling, and disposal of oil and gas waste is done by the industry in a very responsible and lawful manner; oil and gas operators want to do business with lawful waste carriers, and they need the help of local law enforcement to do that. Moreover, when outlaw carriers make a mess, it reflects on the entire oil and gas industry, not just on the bad actors. Since virtually all oil and gas operators want to be in a long, stable, friendly relationship with their neighbors, there is wide support for using state and local authorities to keep things clean.

Some major oil and gas operators – such as Pioneer Natural Resources – even pay for training for local law enforcement along with their own staff. When someone illegally dumps on their well sites, they want it stopped too.

10. *What if local government doesn’t want to act to control oil and gas waste dumping?*

Well, that would be pretty weird. That city or county will probably be a needlessly dirty and dangerous place. They would probably have new elected officials as voters become more aware.