

## Texas Illegal Dumping Resource Center

### Online Class Readings

#### **TIDRC001 Legal / Legislative Update Related to the Profession of Code Enforcement**

This is the reading material for our online class in TIDRC001 Legal / Legislative Update Related to the Profession of Code Enforcement.

Successful completion of this class, including passing the test with a score of 70% or above, will earn you one (1) Continuing Education Unit recognized by the Texas Department of Licensing and Regulation. With the approval of the Training Officer for your agency, this class can also provide one (1) CEU in TCOLE 3880 Environmental Law.

**TEXAS HEALTH AND SAFETY CODE**  
**Sec. 121.003. POWERS OF MUNICIPALITIES AND COUNTIES.**  
**(a) The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health.**

As this little box implies, environmental enforcement is fundamentally a public health issue. It may be that stopping dumping and other forms of pollution also results in a more beautiful and prosperous community, but the essential purpose of enforcement is to protect public health.

The State Legislature has given cities and counties enormous support in protecting and improving the health of their citizens. In addition to this policy, the Legislature has provided a wide number of criminal anti-pollution laws that cities and counties are expected to enforce through their police departments, sheriff offices, fire marshal offices, and constables. Like all Texas criminal laws, the ones protecting our public health are not suggestions, but rather are criminal laws that officers are sworn to enforce. Several of these that are most used are outlined below.

Unfortunately, enforcing the laws that protect our health and the economic value of our communities does not always happen. This may be because officers haven't been trained in the content of these laws; or perhaps law enforcement management or local elected officials "encourage" officers to work on other types of crime; or perhaps local prosecutors, who certainly don't study these statutes in Texas law schools, avoid them out of ignorance or simply not thinking these kinds of violations deserve their attention.

All these problems have been met and solved many times in the 1,200 cities and 254 counties of our state. That process will continue.

## **Types of Environmental Enforcement**

There are three kinds of anti-pollution enforcement:

**Administrative Rule** enforcement by the Texas Commission of Environmental Quality, the Railroad Commission of Texas, or some other state agency. ONLY state agencies can enforce Administrative Rules. However, cities may be authorized in some cases to create LOCAL CODES that are similar to various Administrative Rules. In some cases, these local codes can be tougher than the associated Rule, and in other cases, no more restrictive. For example, cities can adopt municipal codes to control scrap tires that are *tougher* than 30 T.A.C. 328.51 - .71. On the other hand, cities adopting a fire code must assure that their code is *no more restrictive* than the state Outdoor Burning Rule.

### **Administrative Enforcement: Only by state agencies**

**Municipal Code Enforcement** by around 900 (of 1,200) Texas cities who have a formal code enforcement process. Code enforcement can have only limited success when used to control illegal dumping since code officers are not empowered to enforce criminal statutes. Historically, most environmental enforcement has come from code enforcement officers. However, only around 3/4's of Texas cities provide code enforcement processes for their citizens. No counties, of course, provide municipal code enforcement. Counties can achieve roughly the same results by enforcing state anti-pollution criminal laws in unincorporated areas, such as THSC Chapters 341 and 343. The Local Government Code (at Section 54.001) allows municipal code enforcement fines to be as high as \$4,000 where trash is involved. Also, more cities, large and small, are finding that having their own Scrap Tire Control Ordinance makes sense. Its provisions can be *tougher* than State Administrative Rules controlling scrap tires.

Cities enforcing their municipal codes almost always use state registered code enforcement officers, although historically this has not been a requirement. In some smaller cities, other employees or elected officials have enforced codes. The 89<sup>th</sup> State Legislature has changed this.

**Note the changes in Texas law passed by the 89<sup>th</sup> Legislature  
as to who can enforce municipal codes inside cities.  
See H.B. 4765 and S.B. 1376.**

As I read these two laws, the first, H.B. 4765, modifies *Occupations Code Chapter 1952. Code Enforcement Officers* to now limit code enforcement inside a city to licensed code enforcement officers, police officers and fire marshals. Other city employees and officials can no longer be used. The second, S.B. 1376, allows cities not having a registered code enforcement officer some latitude: *If the employer of the code enforcement officer in training does not also employ a registered code enforcement officer, the officer in training may engage in code enforcement without supervision.* Be sure to check with your city attorney to see his or her interpretation of these new limitations.

### **Municipal Code Enforcement: Only by cities who decide to do so**

**Criminal Environmental Law Enforcement** by several state and all local law enforcement agencies. In addition to the thousands of sworn law enforcement officers across the state who can enforce the anti-pollution criminal laws (just as they can enforce any other criminal law), there are also these more specialized sources of enforcement:

- The TCEQ Environmental Crimes Unit is made-up of about a dozen Investigators who are extremely expert in dealing with large and multi-jurisdictional crimes. These Investigators are not sworn law enforcement officers themselves. In investigating criminal cases they partner with state and local law enforcement officers. Cases are often, but not exclusively, filed in Travis County.
- The Texas Parks & Wildlife Department, in addition to their Game Wardens, have a group of around half-a-dozen Sergeants, all sworn law enforcement officers, who enforce criminal environmental laws statewide.
- Local Health Departments organized under THSC Chapter 121 (LOCAL PUBLIC HEALTH REORGANIZATION ACT) can enforce C Misdemeanor violations of laws affecting public health (such as THSC Chapters 341 and 343) in unincorporated areas of the county if they were given the authority to do this by their commissioners court at the time of organization.
- The Railroad Commission of Texas, with regulatory responsibility for oil and gas drilling and pipeline regulation, at one point in its past had a criminal enforcement operation. Currently all enforcement by the Railroad Commission is strictly Administrative. There are serious polluting violations by oil and gas waste haulers that can be enforced by local police and deputies, including TWC Chapter 29 (OIL AND GAS WASTE HAULERS) and selected provisions of

Texas Natural Resources Code Chapter 91 (PROVISIONS GENERALLY APPLICABLE).

**Criminal Enforcement: Only by certified law enforcement officers**

**LOCAL ENFORCEMENT OPTIONS (Code and Law Enforcement)**

This section outlines the ways that local government can respond to illegal dumping and other forms of pollution.

The material in this section also appears in the readings for our class *TIDRC000 Orientation to Environmental Enforcement* since we think it is important to ponder it at some point in these classes.

We encourage you to share this information with other officers and elected officials in your city or county. Most of the questions commonly arising can be answered by these materials. Please feel free to give my contact information [ockels@mac.com] to anyone with additional questions.

**A. Do nothing ... Just live with the mess**

1. Many cities and counties in Texas just ignore dumping and pollution, regardless of the effects on local residents' health and property values
2. Rationalizations for doing nothing include these:
  - a. "A man can do whatever he wants with his own property."
  - b. "The voters don't care."
  - c. "Stopping dumping is too expensive."
3. 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 used in all Texas cities (available in about 900 of 1,200)
3. Using city resources to just cleanup behind dumpers is a bad policy
4. Not effective for many properties inside city (vacant properties; public property; sometimes commercial property)
5. Code violations include dumping/having waste on one's property
6. LG 54.001 now allows a code fine to \$4,000 regardless of amount of waste
7. Code officers are not certified, trained, or authorized to enforce criminal laws
8. However, they are very aware of pollution crimes in their community and can direct and assist law enforcement officers accordingly

9. 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. This is the 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; for human sewage, use THSC Chapter 341 for Public Health Nuisances)
3. Sets misdemeanors and SJ Felony for dumping *litter* or *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 that 60 hours) [see THSC Sec. 365.012(s)]**
8. This law applies to all public and private property in Texas
9. This is a 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 or dumped from a commercial vehicle)
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 to begin prosecution following a 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) [Almost always caused by the 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)
  - 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 violations
    - (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 haulers 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” Public Health law
2. However, we use just a few pages defining and controlling Public Health Nuisance (at the start) and penalties (at end, Section 341.091)
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 codes don’t work or can’t be used in the situation (i.e., a person dumps waste creating a Public Health Nuisance on a lot he doesn’t possess)
  - 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. 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) Third copy to city, county, or district prosecutor (this step almost always ignored; Prosecutor is rarely notified as law requires)
  - (3) **Specified process in statute** if abatement doesn't happen within the time in Notice to Abate, this is supposed to happen:
    - (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 in (e) 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; specifies right to enter property to abate mosquitoes
- 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, which should be charged separately.
- 8. For cases where the dumping was too long ago to use THSC Chapter 365, THSC Chapter 341 can often be used.

#### **E. THSC Chapter 343 PUBLIC NUISANCE**

- 1. Identifies 13 prohibited actions as Public Nuisances (notice that these are not Public HEALTH Nuisances ... but rather Public Nuisances)
- 2. This law covers limited sections of unincorporated areas
  - a. Different violations apply only to specified unincorporated areas
  - b. None apply 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 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 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 (Sec. 343.013)
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 date 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 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 (disposal is a Class A misdemeanor).

**These Enforcement Principals Apply In Every Jurisdiction**

Over the last seventeen years, we have provided over 500 in-person classes in all parts of Texas showing how local cities and counties can make their communities cleaner, healthier and more prosperous by focusing on environmental enforcement. Over those years we have discovered several principles to be in effect in almost all communities.

**1. Stopping illegal dumping is NOT the job of the TCEQ**

The Texas Commission on Environmental Quality (“TCEQ”) is the state agency responsible for most environmental regulation in Texas. This agency also cooperates with local cities, counties, and special districts to keep our surroundings clean, healthy, and more prosperous. This agency operates from its central offices in Austin and thirteen regional offices around the state, currently employing approximately 2,700 persons.

Most of its regulatory efforts involve enforcing Administrative laws (“Rules”) throughout the state, currently regulating nearly 400,000 active entities in 73 program areas. The TCEQ Central Registry can be accessed by the public online at any time to find out whom and what is being regulated in their city or county.

Most illegal dumping occurs where local communities (over 1,200 cities in 254 counties) will discover it long before the TCEQ ever would. Moreover, responding from one agency to violations around the state would be prohibitively expensive, time consuming, and disappointing to the public.

In January 1996 the Texas Natural Resource Conservation Commission (the earlier name of the TCEQ) informed all counties that henceforth all routine illegal dumping enforcement would be a local responsibility. This remains state policy. Consequently, should the TCEQ receive a complaint of illegal dumping, its normal action is to forward that report to local government for investigation and enforcement.

However, most dumping complaints come from local citizens and government officers, not the TCEQ. The process of discovering and responding to illegal dumping is mostly a local issue. Like all local problems, some governments do a better job of responding than others.

## 2. By itself, code enforcement can't stop illegal dumping

About 900 of Texas 1,200 cities (and no counties) have municipal codes to be enforced. Municipal codes prohibiting refuse from being dumped or being present on a property are really designed for residential property use and simply don't cover many areas, including the unincorporated sections.

For example, a local code may work well for stopping a resident from dumping waste on his own property; codes prohibiting having "refuse on a lot" are common in Texas. However, if that same resident dumps waste on a nearby vacant lot owned by someone else, municipal code enforcement often turns its attention to the owner of the vacant lot and attempts to enforce the same "refuse on a lot" code against him. This is arguably not only unjust but needlessly difficult, especially if the lot owner lives in another city or state. This is a common enforcement situation in Texas cities.

Instead, in situations such as this code enforcement should be able to call in local law enforcement to enforce Misdemeanor and Felony illegal dumping laws (i.e., THSC Chapter 365. LITTER) and/or the criminal laws prohibiting the creation of a Public Health Nuisance (i.e., THSC Chapter 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES) against the dumper.

Many times, illegal dumping in a community is a combination of criminal illegal dumping by outsiders doing COMMERCIAL dumping ON the community for profit and garbage and household RESIDENTIAL waste dumping IN the community by people living there. COMMERCIAL dumpers seldom respond to code enforcement attempts, even where the code violation dumping penalty has been raised to \$4,000, as is now allowed under state law.

Where police refuse to respond to crimes observed and reported by code enforcement and others, especially illegal dumping in poorer areas of the community, property values, overall appearance, and public health in those areas suffer.

## 3. Local law enforcement agencies are often reluctant to get involved

Law enforcement officers do not normally study criminal environmental law in their training at police academies around the state. Moreover, prosecutors are primarily exposed to these cases only when violations are detected by local law enforcement. Prosecutors trained at Texas law schools do not normally study state environmental law either. Consequently, handling the first cases can be "new" for everybody involved (including law enforcement, the prosecutor, *and* the criminal defense attorney).

Most of the ways that cities and counties can control polluters and pollution is through the application of state criminal laws by police, sheriff deputies, constables, fire marshals, and other personnel authorized to enforce state criminal laws. Where local law enforcement is reluctant to become involved, city or county management may have to force some policy changes. Unabated dumping is a major political AND public health problem. If applied, the basic dumping penalties are enough to deter most illegal disposal:

<p><b>DUMPING OVER 5 POUNDS IS <u>ALWAYS</u> MORE THAN A C MISDEMEANOR</b></p> <p>Over 5 pounds with no economic gain: \$2,000 / 6 months in jail;  Over 5 pounds to avoid paying disposal cost: \$4,000 / 1 year in jail;  Over 200 cubic feet by individual for any reason: \$10,000 / 6 months to 2 years;  Over 200 cubic feet by company: \$20,000</p>
<p>Most <i>dumping</i> violations <b>ALSO</b> include <i>hauling to illegally dispose</i>, which is a second offense with the same additional penalties.</p>
<p>Note: These penalties are from THSC Chapter 365, the primary illegal dumping law. Greater penalties will also apply if the dumping is into/adjacent to water; or involves hazardous or medical waste, used oil, or other substances.</p>

If a city or county is going to adopt a policy of “*We won’t enforce certain kinds of criminal laws,*” it should (1) make that policy decision in public at the level of the elected officials, not at the level of the Chief of Police or the Sheriff; and (2) be sure to publicize that decision widely. That way the citizens can decide if they want other leaders and dumpers will know where it’s safe to dump without being prosecuted.

#### 4. Source of Enforcement Officers

What do you do if your city is too small to have a code enforcement operation?

In this case you can take advantage of the fact that there is a significant overlap between the contents and purpose of municipal codes and the Public Health Nuisances in THSC Chapter 341.

If you have no code enforcement program but you DO have a municipal police department, those peace officers can enforce THSC Chapter 341 against Public Health Nuisances and THSC Chapter 365 against illegal dumping. Under the changes made by the 89<sup>th</sup> Legislature, police officers and fire marshals are now specifically authorized to enforce municipal codes.

If you have NO code enforcement and NO municipal police department two possibilities are:

- Make sure that the sheriff's office providing law enforcement services to your city includes enforcement of THSC Chapter 341 against Public Health Nuisances and THSC Chapter 365 against illegal dumping. These are criminal laws of the state and should be regularly included in Interlocal Agreements for policing services; or,
- Contract with the constable in your Precinct to enforce those two criminal laws inside your city limits several days each month.
- In both cases file offenses in the Justice Court in the Precinct where the city is located (THSC Chapter 341 and C Misdemeanor violations of THSC Chapter 365) and through the County and District Attorneys for THSC Chapter 365 violations over the Class C Misdemeanor level.

## 5. County and District Prosecutors Do Not Always Want These Cases

No matter how hard a code enforcement officer works to get his or her local police involved in a case ... and no matter how hard police, deputies, or constables work to build a case ... unless your local District and/or County Attorney are willing to prosecute violators according to state criminal laws, the entire process doesn't work. Illegal dumping enforcement is a team sport, and folks at each level are often doing anti-pollution cases for the first time. Cooperation is essential.

If a prosecutor refuses to accept a well-developed criminal anti-pollution case ... or, as is done in some counties, orders law enforcement to treat all dumping cases, even felonies, as C Misdemeanors and avoid arrests ... that prosecutor has by himself decided that his jurisdiction will be dirtier, regardless of the impact on the citizens. Hopefully, other officials and citizens will see that is above the prosecutor's pay grade and intervene.

A new law, (see the box below) was effective in September 2023 and modified Local Government Code Sec. 87. (REMOVAL OF COUNTY OFFICERS FROM OFFICE; FILLING OF VACANCIES).

**HB 17. AN ACT RELATING TO OFFICIAL MISCONDUCT BY AND REMOVAL OF PROSECUTING ATTORNEYS. (88<sup>th</sup> R.S.)**

**Effective September 1, 2023**

**This new law modified Local Government Code Sec. 87.011 to define "official misconduct" to include "(B) a prosecuting attorney's adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of**

***offense under state law,” with some exceptions.***

**Presumably this provision could be used to force a reluctant prosecutor to cease ordering officers to ignore illegal dumping felonies, not make arrests, and only issue Class C tickets. This is a long-standing practice in some counties.**

**LC Sec. 87.015 (a) defines the process as beginning with filing a written petition for removal with the appropriate local court.**

**As to who can file a petition:**

***LC Sec. 87.015 (b-1) A petition for removal of a prosecuting attorney may be filed by any resident of this state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense in that county. At least one of the parties who files the petition must swear to it at or before the filing.***

Perhaps this new law can be used to encourage prosecutors who are ignoring anti-pollution criminal laws to take anti-pollution cases more seriously, if private conversations instigated by other elected officials don't work. The starting point in getting prosecutors on board with a cleaner community is to educate local elected leaders in using THSC Chapter 365 and related laws. But if a local prosecutor remains reluctant, as the saying goes, *“Daylight is the best disinfectant.”* No one should be surprised when a citizen petitions the courts to hold a prosecutor accountable for ignoring illegal dumping laws. Prosecutors who have adopted such a policy in the past should ponder the value of continuing such an outlook and the probable public review that could easily result.

Given the widespread interest Texans have in their communities being prosperous and healthy, it will not be surprising to hear of some reluctant prosecutor being the subject of a removal petition for ignoring criminal environmental laws.

## **6. COMMERCIAL dumping and INDIVIDUAL dumping are different**

There are two categories of dumping:

- COMMERCIAL dumping by individuals and companies seeking to increase profits by avoiding disposal fees; and,
- RESIDENTIAL or CITIZEN or INDIVIDUAL dumping, often for convenience but sometimes to save the costs of proper disposal.

State law allows for local governments to treat these two classes of dumpers differently. COMMERCIAL dumpers may be given larger fines than INDIVIDUAL

dumpers. COMMERCIAL dumping is usually larger in scale than RESIDENTIAL dumping, so larger fines would apply from the larger volumes alone.

But there is also a provision in the Texas Penal Code (Sec. 12.51 AUTHORIZED PUNISHMENTS FOR CORPORATIONS, ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES) allowing much higher fines for these entities. Conviction for dumping over 200 pounds for commercial purposes (i.e., to save disposal costs) could be fined as much as \$20,000, with an additional \$20,000 for conviction of a related hauling for the purpose of discharging at an unapproved site. So, a company trying to avoid dumping costs could be facing a fine of \$40,000, which could put the company out of business in many cases. Knowledge of possible fines of that size should be enough to persuade companies considering illegal dumping to not do so.

COMMERCIAL dumpers receiving a criminal conviction may also suffer unique knock-on penalties in the form of loss of government contracts, bank loans that are called, unhappy Boards of Directors who decide to replace management, and very bad publicity in the market. If the company's stock is traded, a criminal conviction could also involve the loss of stock value and the need to amend their Form 10-K S.E.C disclosure and other federal and state filings.

Given these enormous risks, larger companies avoid illegal dumping as simply being a bad and potentially very expensive business practice.

Entrepreneurs and smaller companies may be less frightened by such possible penalties and decide to save disposal fees by illegally dumping waste.

In some situations, CITIZEN or INDIVIDUAL dumpers may also be given short terms of confinement, which is not available for non-individuals. An individual with a felony conviction may find himself severely restricted from living a "normal" life. The Texas State Law Library has published a list of *Restrictions After a Felony Conviction* showing over 300 such restrictions, including the loss of the ability to carry a gun in public and a wide range of other limitations.

Of course, NONE of these significant deterrents to illegal dumping matter if local law enforcement ignores the crime and/or local prosecutors ignore or downplay them.

## **7. Officer Safety Needs to be Stressed**

Code enforcement officers knock on doors at properties where suspected violations of municipal codes exist. They get to deal with whomever answers the door, and with whatever mental issues that person brings with them.

Code enforcement officers are generally unarmed (except for in places where cities use police officers or fire marshals to enforce codes too), often wear no uniform, and often carry no badge. These are always tense meetings, no matter if that tension is recognized or not.

This tension is there because of the structure of the situation:

- (1) The officer represents government authority;
- (2) No matter how professionally he or she acts, the officer is there to criticize behavior of some sort; and,
- (3) We usually get very defensive when a stranger knocks at our door for the purpose of criticizing us.

The officer wants the resident to change the way they are living: cut the weeds; get rid of the scrap tires; remove the junk vehicle; or do something he or she probably doesn't want to do *and* may legitimately not be able to afford to do. By simply being there, representing the power of government, the officer may generate strong emotional reactions ... both in the resident *and* in the officer. Things can spin out of control.

Moreover, we're at a time when lots of Americans are simply not mentally healthy. The fact that, statistically, over 20% of the time the officer is probably dealing with a person with a diagnosable mental illness or is a substance abuser can make the interaction more difficult.

These are inherently dangerous situations for which code enforcement officers are untrained to cope.

Consequently, city administrators and code enforcement managers have a clear duty to prepare code officers meeting the public to deal with increasingly confrontative and complex human interactions.

As a matter of state law, certified law enforcement officers are required to receive regular training in dealing with emotionally disturbed individuals. As yet, no similar state mandate exists for code enforcement officers.

But there is no reason at all for city administrators to wait until an officer or a resident gets badly hurt ... or killed ... before creating and requiring regular training for these professionals. In fact, as Texas residents become more uneasy and stressed by the effects of climate warming, there's every reason to think that physical risks to all types of officers meeting the public will increase.

### **Last Thing: Test Your Knowledge**

That's all the material for this short class, 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.

The link to your test for this class is found on the class page at TIDRC.ORG.

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