Appendix

TEXAS HEALTH AND SAFETY CODE

CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES

SELECTED PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 341.001. DEFINITIONS. In this chapter:

(1) ~~"Board" means the Texas Board of Health.~~ Repealed 84th Leg., 2015.

(2) "Department" means the Texas Department of Health.

(3) "Drinking water" means water distributed by an individual or public or private agency for human consumption, for use in preparing food or beverages, or for use in cleaning a utensil or article used in preparing food or beverages for, or consuming food or beverages by, human beings. The term includes water supplied for human consumption or used by an institution catering to the public.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Human excreta" means the urinary and bowel discharges of a human.

(5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.

(6) "Privy" means a facility for the disposal of human excreta.

(7) "Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission.

(8) "Septic tank" means a covered water-tight tank designed for sewage treatment.

(9) "Toilet" means the hopper device for the deposit and discharge of human excreta into a water carriage system.

(10) "Tourist court" means a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

(11) "Water supply" means a source or reservoir of water distributed and

used for human consumption.

(12) "Water supply system operator" means a person who:

(A) is trained in the purification or distribution of a public water supply;

(B) has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification; and

(C) is capable of conducting and maintaining the purification processes in an efficient manner.

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION.

The executive commissioner may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management and control of sanitation and for health protection measures.

SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

Sec. 341.011. NUISANCE.

Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(2) spoiled or diseased meats intended for human consumption;

(3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area

(10) the presence of ectoparasites, including bedbugs, lice, and mites,

suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

Sec. 341.012. ABATEMENT OF NUISANCE.

(a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Sec. 341.013. GARBAGE, REFUSE, AND OTHER WASTE.

(a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, 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.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

Sec. 341.014. DISPOSAL OF HUMAN EXCRETA.

(a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance.

(b) Effluent from septic tanks constructed after September 4, 1945, shall be disposed of through:

(1) a subsurface drainage field designed in accordance with good public health engineering practices; or

(2) any other method that does not create a public health nuisance.

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the department. A privy may not be constructed or maintained over an abandoned well or over a stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of a privy constructed and maintained in conformity with the department's specifications shall be kept in a sanitary condition at all times and must have adequate lighting and ventilation.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health authority or the department.

Sec. 341.015. SANITATION OF ICE PLANTS.

(a) A person may not go on the platform covering the tanks in which ice is frozen in an ice factory unless the person is an officer, employee, or other person whose duties require that action.

(b) An employee whose services are required on tanks shall be provided with clean shoes or boots that may not be used for any other purpose.

(c) Ice contaminated with sand, dirt, cinders, lint, or other foreign substance may not be sold or offered for sale for human consumption.

(d) Water used in the manufacturing of ice must be from an approved source and be of a safe quality.

e) An ice plant operator shall provide sanitary handwashing and toilet facilities for the employees of the plant.

Sec. 341.016. SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY.

(a) A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

(b) An industrial establishment shall be continually maintained in a sanitary condition.

(c) The department shall make available to the state's citizens:

(1) current information concerning minimum allowable concentrations of toxic gases; and

(2) environmental standards that relate to the health and safety of the employees of industrial establishments in this state.

(d) The department shall survey industrial establishments to study industrial health and sanitation issues, including water supplies and distribution, waste disposal, and adverse conditions caused by processes that may cause ill health of industrial workers.

(e) The department shall give each surveyed establishment a summary of the studies and findings under Subsection (d) and make necessary recommendations for the adequate protection of the health, safety, and well-being of the workers.

Sec. 341.017. SANITATION FACILITIES FOR RAILROAD MAINTENANCE-OF-WAY EMPLOYEES.

(a) The executive commissioner shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

(b) The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this section.

Sec. 341.018. RODENT CONTROL.

(a) A person who possesses an enclosed structure used or operated for public trade and who knows that the structure is infested with rodents shall:

(1) attempt to exterminate the rodents by poisoning, trapping, mitigating, or other appropriate means; and

(2) provide every practical means of eliminating rats in the structure.

(b) A public building that is constructed after September 4, 1945, must incorporate rat-proofing features.

(c) The department shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared.

Sec. 341.019. MOSQUITO CONTROL ON UNINHABITED RESIDENTIAL PROPERTY.

(a) Notwithstanding any other law, a municipality, county, or other local health authority may abate, without notice, a public health nuisance under Section 341.011(7) that:

(1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and

(2) is an immediate danger to the health, life, or safety of any person.

(b) A public official, agent, or employee charged with the enforcement of health, environmental, or safety laws may enter the premises described by Subsection (a) at a reasonable time to inspect, investigate, or abate the nuisance.

(c) In this section, abatement is limited to the treatment with a mosquito larvicide of stagnant water in which mosquitoes are breeding.

(d) The public official, agent, or employee shall post on the front door of the residence a notice stating:

(1) the identity of the treating authority;

(2) the purpose and date of the treatment;

(3) a description of the areas of the property treated with larvicide;

(4) the type of larvicide used; and

(5) any known risks of the larvicide to humans or animals.

SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES

Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED.

This chapter prescribes the minimum requirements of sanitation and health protection in this state and does not affect a home-rule municipality's authority to enact:

(1) more stringent ordinances in matters relating to this chapter; or

(2) an ordinance under:

(A) Article XI, Section V, of the Texas Constitution;

(B) Article 1175, Revised Statutes; or

(C) Section 51.072, Local Government Code.

Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES.

(a) In a home-rule municipality, an environmental health officer may be appointed to enforce this chapter.

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the department.

(c) The environmental health officer shall assist the department in enforcing this chapter and is subject to:

(1) the authority of the department; and

(2) removal from office in the same manner as a municipal health authority.

SUBCHAPTER F. PENALTIES

Sec. 341.091. CRIMINAL PENALTY.

(a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than $10 or more than $200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than $10 or more than $1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

Sec. 341.092. CIVIL ENFORCEMENT.

(a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o) shall be assessed a civil penalty. A civil penalty under this section may not be less than $10 or more than $200 for each violation and for each day of a continuing violation.

(c) If it is shown on the trial of the defendant that the defendant has previously violated this section, the defendant shall be assessed a civil penalty of not less than $10 or more than $1,000 for each violation and for each day of a continuing violation.

(d) If it appears that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the department, a county, a municipality, or the attorney general on request by the district attorney, criminal district attorney, county attorney, or, with the approval of the governing body of the municipality, the attorney for the municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(e) The department is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the department's request, or as otherwise provided by this chapter, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(i) Civil penalties recovered in a suit brought under this section by a county or municipality through its own attorney shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

(j) The state is entitled to civil penalties recovered in a suit instituted by the attorney general.

TEXAS HEALTH AND SAFETY CODE
CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.002. DEFINITIONS. In this chapter:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibition or control of access; and

(C) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.

(2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish

offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.

(6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

(7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

(8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

(9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(10-a) "Undeveloped land" means land in a natural, primitive state that lacks improvements, infrastructure, or utilities and that is located in an unincorporated area at least 5,000 feet outside the boundaries of a home-rule municipality.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height; or

(B) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW.

This chapter does not affect a right, remedy, or penalty under other state law.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

Sec. 343.011. PUBLIC NUISANCE.

(a) This section applies only to the unincorporated area of a county.

(b) A person may not cause, permit, or allow a public nuisance under this section.

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched and locked gate; and

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining on any property in a neighborhood in a county with a population of more than 1.1 million a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(8) maintaining a flea market in a manner that constitutes a fire hazard;

(9) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has

the commissioners court of the county as its governing body;

(10) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement;

(11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;

(12) discarding refuse on property that is not authorized for that activity; or

(13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency for the activity described by Subsection (c); or

(B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or

(2) agricultural land.

(d-1) This subsection applies only to a county with a population of 3.3 million or more and only in an unincorporated area in the county that is at least 5,000 feet outside the boundaries of a home-rule municipality. Subsections (c)(3) and (4) apply only to undeveloped land in the county for which:

(1) a condition on that land has been found to cause a public nuisance under those provisions in the preceding year; and

(2) a finding of public nuisance could have been applied to that condition when the condition first occurred.

(e) In Subsection (d), "agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Sec. 343.0111. SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION.

(a) The commissioners court of a county by order may:

(1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Sec. 343.012. CRIMINAL PENALTY.

(a) A person commits an offense if:

(1) the person violates Section 343.011(b); and

(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than $200 or more than $1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Sec. 343.013. INJUNCTION.

(a) A county or district court may by injunction prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section 343.011(c)(1), (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

(1) the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

(2) the owner of the premises knew about the nuisance and has not

responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner.

(d) In granting relief under Subsection (c), the court:

(1) may not, in a suit brought under Section 343.011(c)(10), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from accessing the property but may prohibit a continued or future violation.

SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. AUTHORITY TO ABATE NUISANCE.

(a) If a county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter, the county may abate a nuisance under this chapter:

(1) by demolition or removal, except as provided by Subsection (b);

(2) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibiting or controlling access to the premises;

(3) in the case of a nuisance under Section 343.011(c)(6), by:

(A) prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or

(B) draining and filling the swimming pool; or

(4) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361.

(b) In the case of a nuisance under Section 343.011(c)(13), the county may use any means of abatement reasonably necessary to bring the system into compliance with Chapter 366 only after the defendant fails to abate the nuisance as ordered by the court under Section 343.012(e).

Sec. 343.022. ABATEMENT PROCEDURES.

(a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee. A person authorized by the person administering the abatement program may administer:

(1) the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (6), (9), or (10);

(2) the removal or demolition of the nuisance; and

(3) the abatement of a nuisance described by Section 343.011(c)(12).

(b) The abatement procedures must require that written notice be given to:

(1) the owner, lessee, occupant, agent, or person in charge of the premises; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and

(B) the person responsible can be identified.

(c) The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;

(3) that failure to abate the nuisance may result in:

(A) abatement by the county;

(B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

(C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;

(4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (6), (9), or (10); and

(5) that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

(d) The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) Except as provided in Subsection (f), the abatement procedures must require a hearing before the county abates the nuisance if a hearing is

requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

(f) A county may, before conducting a hearing, abate a nuisance under Section 343.011(c)(6) by prohibiting or controlling access to the premises on which the nuisance is located and installing a cover that cannot be opened by a child over the entire swimming pool, but only if the county conducts a hearing otherwise in accordance with Subsection (e) after the nuisance is abated.

Sec. 343.023. ASSESSMENT OF COSTS; LIEN.

(a) A county may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than $100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than $100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

Sec. 343.024. AUTHORITY TO ENTER PREMISES.

(a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person

Sec. 343.025. ENFORCEMENT.

A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

TEXAS HEALTH AND SAFETY CODE

CHAPTER 365. LITTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 365.001. SHORT TITLE.

This chapter may be cited as the Texas Litter Abatement Act.

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE.

The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law. (Note: See Texas Water Code Sec. 7.145 for felony water pollution)

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE.

The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT.

The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Sec. 365.005. VENUE AND RECOVERY OF COSTS.

(a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. DEFINITIONS. In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted or registered by the Texas Commission on Environmental Quality;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

(4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

(6) "Litter" means:

(A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or

(B) nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

(9) "Solid waste" has the meaning assigned by Section 361.003.

[Definition from that section reads: (35) "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term (A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(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; and,

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

Sec. 365.012. ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES.

(a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the

person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under Subsection (a), (b), or (c) is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) An offense under Subsection (a-1) is a misdemeanor under this subsection if the litter or other solid waste to which the offense applies weighs less than 500 pounds or has a volume of less than 100 cubic feet and is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed 30 days; or

(3) both such fine and confinement.

(e) An offense under Subsection (a), (b), or (c) is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or

(2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:

(1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;

(2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or

(3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns; and

(4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of $50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

(p) It is an affirmative defense to prosecution under Subsection (a-1) that the person discarded the lighted litter in connection with controlled burning the person was conducting in the area into which the lighted litter was discarded.

(q) The operator of a public conveyance in which smoking tobacco is allowed shall post a sign stating the substance of Subsections (a-1) and (d-1) in a conspicuous place within any portion of the public conveyance in which smoking is allowed.

(r) If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Subsection (a), the actor may be prosecuted only under Subsection (a-1). If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Chapter 28, Penal Code, the actor may be prosecuted under Subsection (a-1) or Chapter 28, Penal Code, but not both.

(s) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

(t) Chapter 15, Penal Code, applies to an offense under this section.

Sec. 365.013. RULES AND STANDARDS; CRIMINAL PENALTY.

(a) The Texas Commission on Environmental Quality shall adopt rules and

standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

(d) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS.

(a) This subchapter does not apply to farmers:

(1) in handling anything necessary to grow, handle, and care for livestock; or

(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Sec. 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS.

(a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Sec. 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY.

(a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

(c) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Sec. 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES.

(a) The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

SUBCHAPTER C. SPECIAL PROVISIONS

Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE.

The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY.

(a) The definitions provided by Section 365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY.

(a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Sec. 365.034. COUNTY REGULATION OF LITTER NEAR PUBLIC HIGHWAY; CRIMINAL PENALTY.

(a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway in the county;

(2) provide for the removal and disposition of litter accumulated near a

public highway in violation of an order adopted under this section; and

(3) provide for the assessment against a person who owns the property from which litter is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the litter.

(b) Before the commissioners court takes any action to remove or dispose of litter under this section, the court shall send a notice by certified mail to the record owners of the property on which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the litter was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Sec. 365.035. PROHIBITION ON POSSESSING GLASS CONTAINERS WITHIN BOUNDARY OF STATE-OWNED RIVERBED; PENALTIES.

(a) In this section, "glass container" means a glass container designed to contain a beverage, including a bottle or jar.

(b) A person commits an offense if the person knowingly possesses a glass container within the boundaries of a state-owned riverbed in a county:

(1) that is located within 85 miles of an international border; and

(2) in which at least four rivers are located.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (b) that the person who possessed the glass container:

(1) did not transport the glass container into the boundaries of the riverbed;

(2) possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle; or

(3) is the owner of property adjacent to the section of the riverbed in

which the person possessed the glass container.

(e) It is an exception to the application of Subsection (b) that the person possessed the glass container only for the purpose of water sampling or conducting scientific research as authorized by:

(1) a governmental entity;

(2) a utility as defined by Section 11.004, Utilities Code;

(3) a retail public utility as defined by Section 13.002, Water Code;

(4) a power generation company as defined by Section 31.002, Utilities Code;

(5) a surface coal mining and reclamation operation, as defined by Section 134.004, Natural Resources Code; or

(6) a school-sponsored or university-sponsored educational activity.

REVERSED AND REMANDED; Opinion Filed January 9, 2006

In The
Court of Appeals

No. 05-06-00001-CR

JAMES F. GLENDENING, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 15th Judicial District Court
Grayson County, Texas
Trial Court Cause No. 049061

OPINION
Before Justices Bridges, FitzGerald, and Lang
Opinion By Justice FitzGerald

On his plea of not guilty, a jury convicted James F. Glendening of the state jail felony offense of illegal dumping of scrap tires pursuant to section 365.012(g)(2) of the health and safety code. *See* Tex. Health & Safety Code Ann. § 365.012(g)(2) (Vernon Supp. 2006). He was sentenced to two years' confinement, probated for four years, and assessed a $10,000 fine. In three issues, appellant contends the trial court improperly overruled his objection to the State's closing argument; he received ineffective assistance of counsel at trial because counsel failed to assert a bar to prosecution provided by section 365.012(k) of the health and safety code regarding "temporary storage for future disposal" of the scrap tires; and the term "temporary storage" in section 365.012(k) is unconstitutionally vague. Because we agree appellant received ineffective assistance of counsel, we resolve his second issue in his favor. Therefore, we reverse the trial court's judgment and remand this case to the trial court for new trial.

BACKGROUND

In 1999, appellant acquired a tire baler and moved it onto property he bought in rural Grayson County. Appellant applied to the Texas Natural Resource Conservation Commission (the Commission) *See Footnote 1* for registration as a scrap tire facility processor, representing that he would use a "mobile bailer" and that the maximum number of tires to be received monthly would be 65,000, and the maximum number and weight of scrap tires to be

stored on the site was 5,000, weighing 50 tons. In his application, appellant "agree[d] to develop and operate the site in accordance with the application, regulations, and any special conditions that may be imposed . . . ." Appellant stated that 2,500 to 3,000 scrap tires would be accepted daily at the site; all tires were expected to be processed and baled that same day and no later than 48 hours; all bales would be used for "road base foundation"; and the completed job would require "almost 200,000 scrap tires and we anticipate a 4 to 5 month completion time."

Appellant also applied to the Commission for registration as a scrap tire transporter. Both applications were approved. By a letter dated September 9, 1999, the Commission approved appellant's application and issued a registration, effective for 60 months; also, the Commission authorized the baling and "the temporary and short-term storage of not more that 65,000 whole passenger size scrap tires (or weight equivalent) at the site . . . ." Further, the letter stated, "The conditions for the issuance of this registration are that all operations be conducted in accordance with the application and in compliance with all applicable Commission rules." *See Footnote 2*

An employee transported tires to the property beginning in December 1999. There was evidence that 110 tires produced 1 bale. About 7,000 tires were baled over a period of seven to eight months, and then the baler stopped working. The baler was never repaired.

The Commission's inspectors visited the property in April 2000, and noted some violations of regulations, such as a lack of mosquito control. The inspectors also noted that no tires were being baled. Their report noted that there were 60 tire bales and 40,000 to 50,000 scrap tires on the ground. In September 2000, the Commission conducted another inspection and noted there were an estimated 70,000 tires on the property and there had been no baling or transporting offsite for over 6 months.

A third inspection was conducted in January 2001. Regulatory violations were noted, and between 110,000 and 120,000 tires were observed on the ground, but no baling operation was observed. The Commission considered appellant's facility to be an "unauthorized tire site."

The Commission conducted a final inspection on September 26, 2001, "to evaluate and review [appellant's] thirty day supply authorization." The Commission's environmental investigator/structural management registration coordinator called appellant before the inspection and told him it was "to evaluate his registration." Appellant told the investigator he did not have the money to continue the baling; he "didn't care" if his registration was revoked; and he "would continue to take tires on his property because he needed the money." The investigation team noted regulatory violations and about 164,000 tires on the property, and there had been no baling. The Commission rescinded the thirty-day supply, which meant that the site "became unauthorized," and began the process to revoke appellant's approvals. According to the Commission, appellant was "no longer operating according to his registration." There was evidence appellant received the inspection report.

There was also evidence appellant paid a penalty assessed by the Commission and stopped receiving tires after the Commission revoked his approvals.

Appellant testified the Commission told him to stop collecting tires, but he ignored the request because he had monthly expenses to cover. He testified his monthly income from the business was $7,920; his expenses were $10,005; and his monthly loss was $2,085. There was testimony that appellant took some cash from the business account for personal expenses. He testified that the cost of repairing the baler was $1,000. He also testified that he had an arrangement with the Texas Department of Transportation to use the bales for erosion. However, he estimated he needed to get $25 to $35 per bale for the project. The Department discovered it could get free bales from an out-of-state supplier. Appellant gave the bales to the Department, but decided not to "pay for employees or straps or fuel or anything else to bale more tires without any compensation."

Appellant also testified that he talked to people in Florida about equipment that would liquify rubber, tires, and garbage into pellets. He also testified that he brought a scrap tire recycling consultant from Kansas City to the site to help determine a way "to get this recycling thing going." However, she determined the property was not suitable. Appellant testified that he "tried . . . to come up with a solution." He also testified that he tried to find an investor to "take this business forward and turn it into a viable operation."

The indictment alleged appellant, on or about September 6, 2001, in Grayson County, for a commercial purpose, intentionally or knowingly transported, disposed, allowed, permitted, or received litter or other solid waste, namely, discarded scrap tires, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, at a place that was not an approved solid waste site. The jury charge tracked the indictment.

After the jury convicted him of illegal dumping and punishment was assessed, appellant filed a motion for new trial or motion for arrest of judgment, contending the evidence at trial showed he temporarily stored the tires on his property for future disposal at the time the offense was alleged to have occurred, pursuant to section 365.012(k), but this issue was not raised as a bar to prosecution because his attorney failed to notice this section and did not raise it. Thus, he alleged he received ineffective assistance of counsel. Appellant also asserted that section 365.012(k) was unconstitutionally vague as it applied to him because it did not define "temporary storage." The trial court heard the motion and orally denied it. This appeal followed.

INEFFECTIVE ASSISTANCE OF COUNSEL

In his second issue, appellant contends section 365.012(k) is a bar to prosecution that applied in these circumstances and, therefore, his counsel should have raised it at trial and brought it as part of the jury charge.

Standard of Review

To establish ineffective assistance of counsel, appellant must show by a preponderance of the evidence that his counsel's representation fell below the standard of prevailing professional norms and that there is a reasonable probability that, but for counsel's deficiency, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see Ex parte Gonzales*, 204 S.W.3d 391, 393 (Tex. Crim. App. 2006); *Salinas v. State*, 163 S.W.3d 734, 740 (Tex. Crim. App. 2005). We presume counsel's actions and decisions were reasonably professional and motivated by sound trial strategy. *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). When reviewing a claim of ineffective assistance, we "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland*, 466 U.S. at 689 (citation omitted). The second prong means that the appellant must show a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). A "reasonable probability" is one sufficient to undermine confidence in the outcome. *Id.* We judge counsel's performance by "the totality of the representation"; our scrutiny of counsel's performance must be highly deferential with every effort made to eliminate the distorting effects of hindsight. *See Robertson v. State*, 187 S.W.3d 475, 483 (Tex. Crim. App. 2006).

Jury Instruction

It is well settled that an accused has the right to an instruction on any defensive issue raised by the evidence, whether that evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court may or may not think about the credibility of the evidence. *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999); *Dyson v. State*, 672 S.W.2d 460, 463 (Tex. Crim. App. 1984). This rule is designed to insure that the jury, not the judge, will decide the relative credibility of the evidence. *Granger*, 3 S.W.3d at 38. The defendant's testimony alone may be sufficient to raise a defensive theory requiring a charge. *Dyson*, 672 S.W.2d at 463.

Criminal Penalties for Illegal Dumping

Section 365.012 of the health and safety code provides for criminal penalties for illegal dumping; subsections (a) through (c) provide:

(a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site,

regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

Tex. Health & Safety Code Ann. § 365.012(a)-(c) (Vernon Supp. 2006). Subsection (g)(2) classifies the offense as a state jail felony if the litter or solid waste is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more. *Id.* § 365.012(g)(2). *See Footnote 3* Subsection (k) provides:

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

Id. § 365.012(k). "Litter" includes tires. *Id.* § 365.011(6)(B)(iii) (Vernon 2001).

Discussion

At the hearing on the motion for new trial, appellant's trial counsel testified that he had been a criminal lawyer for about twenty-five years, but this was his first "trash case." He testified that he "probably" read section 365.012(k), but, "I can't say that I really got familiar with it at that point." He testified the evidence showed that there were about 200,000 tires on the property owned by appellant; the tires had been on the property for "about a few years"; and appellant "intended on recycling these tires at some point." Based on that evidence, counsel testified that section 365.012(k) "could have been an exclusion," but "for whatever reason" he, as counsel, "didn't consider it at this point." Counsel testified that he should have requested as part of the jury charge "for the jury to consider whether it was temporary storage going on or not."

Counsel testified that this section "should have been brought out at trial." He was asked, "[C]ould the results have been different?" He replied, "Yes, I suppose so, depending upon the jury's view of it, yes." The State asked counsel whether the evidence showing appellant "had to move so many tires within thirty days" would be "more like temporary" than the "two plus years at the time of the indictment." Counsel replied, "Probably so, yes." Counsel also testified that appellant "all along [had] the intent of recycling tires" and "temporary" is a "fact issue depending on the circumstances."

It is undisputed that appellant baled some tires and continued to receive tires in excess of the number approved by the Commission for a 30-day supply and for on-site storage. It is also undisputed that appellant intended the baling business to be a commercial operation and explored possibilities other than baling to dispose of the tires. Appellant's issue depends on whether his

testimony, if believed, was some evidence that he was engaged in the "temporary storage for future disposal" of the scrap tires, thus entitling him to an instruction on this issue. *See id.* § 365.012(k); *see also* Tex. Pen. Code Ann. § 2.03(e) (Vernon 2003) ("A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense."). We conclude that it was. Counsel's testimony at the hearing on the motion for new trial shows that failure to request such an instruction was not the result of trial strategy, but a failure to read subsection (k) and, in light of appellant's testimony at trial, request a defensive jury instruction. *See Granger*, 3 S.W.3d at 38; *Dyson*, 672 S.W.2d at 463. Thus, appellant's counsel's representation fell below the standard of prevailing professional norms by failing to request such an instruction. Moreover, trial counsel testified that, if the jury believed appellant's testimony, counsel thought the result would have been different. As trial counsel noted, appellant "all along [had] the intent of recycling tires" and "temporary" is a "fact issue depending on the circumstances." Credibility issues are for the jury. *See Granger*, 3 S.W.3d at 38; *Dyson*, 672 S.W.2d at 463. The State argues that appellant failed to put on any evidence that the result of the trial would have been different if counsel had raised subsection (k). The State argues that no jurors testified that such a defense would have changed their opinions. However, "[p]rejudice to [appellant] from counsel's deficient performance is judged by 'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" *Ex parte Amezquita*, No. AP-75383, 2006 WL 3391037, at *2 (Tex. Crim. App. Nov. 22, 2006) (quoting *Ex parte Chandler*, 182 S.W.3d 350, 353 (Tex. Crim. App. 2005)); *see Strickland*, 466 U.S. at 686. "[T]he purpose of the constitutional requirement of effective counsel is to ensure a fair trial." *Ex parte Amezquita*, 2006 WL 3391037, at *2 (quoting *Ex parte Chandler*, 182 S.W.3d at 353); *see Strickland*, 466 U.S. at 686. The submission of an instruction under section 365.012(k) would have properly presented appellant's defense raised by the evidence. Omission of this instruction deprived appellant of any legal defense. We conclude trial counsel's testimony is some evidence there was a reasonable probability that, but for the failure to request an instruction, the jury would have had the opportunity to consider whether appellant came within subsection (k) and the result of the proceeding would have been different. *See Ex parte Gonzales*, 204 S.W.3d at 393, 399-400. Consequently, we cannot rely on the trial as having produced a just result. *See Ex parte Amezquita*, 2006 WL 3391037, at *2.

The State also argues that subsection (k) "appears to protect individual land owners who are engaged in private, non-commercial activities that result in the temporary storage of tires on their own land." Thus, the State argues that because appellant was running a commercial operation involving large amounts of tires on land "he bought for the purpose of dumping tires on it," he was not the type of individual meant to be protected by subsection (k). As explained in *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991), courts must interpret an unambiguous statute literally, unless doing so would

lead to an absurd result that the legislature could not have intended. By beginning with the plain language of a statute to interpret its meaning, courts "seek to effectuate the 'collective' intent or purpose of the legislators who enacted the legislation." *Id.* (citation omitted). Moreover, every word of a statute is presumed to have been used for a purpose, and every word excluded must also be presumed to have been excluded for a purpose. *Timmons v. State*, 952 S.W.2d 891, 892 (Tex. App.-Dallas 1997, no pet.).

By its plain language, subsection (k) is not directed solely to either ordinary citizens or businesses. *See Ex parte Weise*, 23 S.W.3d 449, 455 (Tex. App.-Houston [1st Dist.] 2000, orig. proceeding), *rev'd on other grounds*, 55 S.W.3d 617 (Tex. Crim. App. 2001). We note that both subsections (f)(2) and (g)(2) apply penalties to disposal of litter or other solid waste "for a commercial purpose," but this language is not included in subsection (k). *See* Tex. Health & Safety Code Ann. §§ 365.012(f)(2), (g)(2). In addition, section 365.014 provides for a defense for farmers and an affirmative defense for persons who receive litter or other solid waste from another person, but did not know, or reasonably could not have known, that litter or other solid waste was involved, and did not receive compensation for the receipt, storage, processing, or treatment. *See id.* §§ 365.014(a), (c) (Vernon 2001). We presume the legislature did not include any narrowing language, such as relating to "commercial purpose" or "compensation," in subsection (k) for a purpose. *See Timmons*, 952 S.W.2d at 892. Accordingly, we reject the State's argument that subsection (k) applies only to non-commercial operations.

We conclude appellant carried his burden to produce evidence that trial counsel's performance was deficient and that, but for counsel's unprofessional errors, the result of the trial would have been different. *See Bone*, 77 S.W.3d at 833. Accordingly, we resolve appellant's second issue in his favor.

CONCLUSION

Having resolved appellant's second issue in his favor, we reverse the trial court's judgment and remand this case to the trial court for new trial. Because of our disposition of appellant's second issue, we need not address his first issue as to closing argument or his third issue raising a constitutional challenge. *See* Tex. R. App. P. 47.1; *Ward v. State*, 188 S.W.3d 874, 876 n.1 (Tex. App.-Amarillo 2006, pet. ref'd) (courts do not consider constitutional challenges when they can dispose of cases on nonconstitutional grounds).

KERRY P. FITZGERALD
JUSTICE

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Footnote 1 In 2002, the Texas Natural Resource Conservation Commission was renamed the Texas Commission on Environmental Quality. *See City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 99 n.1 (Tex. 2006). Our references to "the Commission" include both the TNRCC and the TCEQ.

Footnote 2 See 30 Tex. Admin. Code § 328.63(b) (1999) (Tex. Comm'n on Envtl. Quality, Scrap Tire Facility Requirements) (providing for "scrap tire storage site registration").

Footnote 3 The Commission considers a passenger tire as occupying 4 cubic feet and weighing 20 pounds. 30 Tex. Admin. Code § 328.71(d)(1) (Tex. Comm'n on Envtl. Quality 1999, amended 2001).

TEXAS WATER CODE
CHAPTER 7. ENFORCEMENT

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

Sec. 7.141. DEFINITIONS. In this subchapter:

(1) "Appropriate regulatory agency" means the commission, the Texas Department of Health, or any other agency authorized to regulate the handling and disposal of medical waste.

(2) "Corporation" and "association" have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.

(3) "Large quantity generator" means a person who generates more than 50 pounds of medical waste each month.

(4) "Medical waste" has the meaning assigned by Section 361.003, Health and Safety Code.

(5) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.

(6) "Small quantity generator" means a person who generates 50 pounds or less of medical waste each month.

Sec. 7.142. VIOLATIONS RELATING TO UNLAWFUL USE OF STATE WATER.

(a) A person commits an offense if the person violates:

(1) Section 11.081; (2) Section 11.083; (3) Section 11.084; (4) Section 11.087; (5) Section 11.088; (6) Section 11.089; (7) Section 11.090; (8) Section 11.091; (9) Section 11.092; (10) Section 11.093; (11) Section 11.094; (12) Section 11.096; or (13) Section 11.205.

(b) An offense under Subsection (a)(9), (a)(10), or (a)(13) is punishable

under Section 7.187(1)(A) or (2)(B) or both.

(c) An offense under Subsection (a)(1), (a)(2), (a)(4), (a)(6), (a)(7), or (a)(8) is punishable under Section 7.187(1)(A) or Section 7.187(2)(C) or both.

(d) An offense under Subsection (a)(3) or (a)(11) is punishable under Section 7.187(1)(A) or Section 7.187(2)(D) or both.

(e) An offense under Subsection (a)(5) is punishable under Section 7.187(1)(A) or Section 7.187(2)(E) or both.

(f) Possession of state water when the right to its use has not been acquired according to Chapter 11 is prima facie evidence of a violation of Section 11.081.

(g) Possession or use of water on a person's land by a person not entitled to the water under this code is prima facie evidence of a violation of Section 11.083.

Sec. 7.143. VIOLATION OF MINIMUM STATE STANDARDS OR MODEL POLITICAL SUBDIVISION RULES.

(a) A person commits an offense if the person knowingly or intentionally violates a rule adopted under Subchapter J, Chapter 16.

(b) An offense under this section is a Class A misdemeanor.

Sec. 7.145. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant:

(1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency; or

(2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.147. UNAUTHORIZED DISCHARGE.

(a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant:

(1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; or

(2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is

less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

(b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Sec. 7.148. FAILURE TO PROPERLY USE POLLUTION CONTROL MEASURES.

(a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use pollution control or monitoring devices, systems, methods, or practices required by Chapter 26 or a rule adopted or a permit or an order issued under Chapter 26 by the commission or one of its predecessor agencies unless done in strict compliance with the rule, permit, or order.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.149. FALSE STATEMENT.

(a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan, or other document, including monitoring device data, filed or required to be maintained by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.150. FAILURE TO NOTIFY OR REPORT.

(a) A person commits an offense if the person intentionally or knowingly fails to notify or report to the commission as required under Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.151. FAILURE TO PAY FEE.

(a) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Sec. 7.152. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action knowingly places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(I) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Sec. 7.153. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued

or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Sec. 7.154. RECKLESS UNAUTHORIZED DISCHARGE AND ENDANGERMENT.

(a) A person commits an offense if the person, acting recklessly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(E).

Sec. 7.155. VIOLATION RELATING TO DISCHARGE OR SPILL.

(a) A person commits an offense if the person:

(1) operates, is in charge of, or is responsible for a facility or vessel that causes a discharge or spill as defined by Section 26.263 and does not report the spill or discharge on discovery; or

(2) knowingly falsifies a record or report concerning the prevention or cleanup of a discharge or spill.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is a felony of the third degree.

Sec. 7.156. VIOLATION RELATING TO UNDERGROUND STORAGE TANK.

(a) A person or business entity commits an offense if:

(1) the person or business entity engages in the installation, repair, or removal of an underground storage tank and the person or business

entity:

(A) does not hold a registration under Section 26.452; and

(B) is not under the substantial control of a person or business entity who holds a registration under Section 26.452;

(2) the person or business entity:

(A) authorizes or allows the installation, repair, or removal of an underground storage tank to be conducted by a person or business entity who does not hold a registration under Section 26.452; or

(B) authorizes or allows the installation, repair, or removal of an underground storage tank to be performed or supervised by a person or business entity who does not hold a license under Section 26.456; or

(3) the conduct of the person or business entity makes the person or business entity responsible for a violation of Subchapter K, Chapter 26, or of a rule adopted or order issued under that subchapter.

(b) A person commits an offense if the person performs or supervises the installation, repair, or removal of an underground storage tank unless:

(1) the person holds a license under Section 26.456; or

(2) another person who holds a license under Section 26.456 is substantially responsible for the performance or supervision of the installation, repair, or removal.

(c) A person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

(d) An offense under this section is a Class A misdemeanor.

Sec. 7.1565. PRESUMPTION.

If in the exercise of good faith a person depositing or causing to be deposited a regulated substance into an underground storage tank regulated under Chapter 26 receives a certificate of compliance for that underground storage tank under Section 26.346, the receipt of the certificate of compliance shall be considered prima facie evidence of compliance with this section.

Sec. 7.157. VIOLATION RELATING TO INJECTION WELLS.

(a) A person commits an offense if the person knowingly or intentionally violates Chapter 27 or a rule adopted or an order or a permit issued under Chapter 27.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Sec. 7.158. VIOLATION RELATING TO PLUGGING WELLS.

(a) A person commits an offense if the person is the owner of a well that is

required to be cased or plugged by Chapter 28 and the person:

(1) fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so; or

(2) fails to comply with any other order issued by the commission under Chapter 28 within the 30-day period following the date of the order.

(b) An offense under this section is a misdemeanor and is punishable under Section 7.187(1)(A).

Sec. 7.159. VIOLATION RELATING TO WATER WELLS OR DRILLED OR MINED SHAFTS.

(a) A person commits an offense if the person knowingly or intentionally violates Chapter 28 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Sec. 7.160. VIOLATION RELATING TO CERTAIN SUBSURFACE EXCAVATIONS.

(a) A person commits an offense if the person knowingly or intentionally violates Chapter 31 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Sec. 7.161. VIOLATION RELATING TO SOLID WASTE IN ENCLOSED CONTAINERS OR VEHICLES.

(a) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

(1) without having in possession the special permit required by Section 361.091, Health and Safety Code;

(2) on a date or time not authorized by the commission; or

(3) without a commission inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.

(b) An offense under this section is a Class B misdemeanor.

(c) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under Section 361.091, Health and Safety Code, issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are

free of putrescible, hazardous, or infectious waste.

(d) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Sec. 7.162. VIOLATIONS RELATING TO HAZARDOUS WASTE.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits;

(2) stores, processes, exports, or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, plan, or other document filed, maintained, or used to comply with any requirement of Chapter 361, Health and Safety Code, applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules of the appropriate regulatory agency adopted under Chapter 361, Health and Safety Code;

(5) transports without a manifest, or causes or allows to be transported without a manifest, any hazardous waste required by rules adopted under Chapter 361, Health and Safety Code, to be accompanied by a manifest;

(6) tampers with, modifies, disables, or fails to use required pollution control or monitoring devices, systems, methods, or practices, unless done in strict compliance with Chapter 361, Health and Safety Code, or with an order, rule, or permit of the appropriate regulatory agency;

(7) releases, causes, or allows the release of a hazardous waste that causes or threatens to cause pollution, unless the release is made in

strict compliance with all required permits or an order, rule, or permit of the appropriate regulatory agency; or

(8) does not notify or report to the appropriate regulatory agency as required by Chapter 361, Health and Safety Code, or by a rule adopted or an order or a permit issued by the appropriate regulatory agency under that chapter.

(b) An offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. An offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(E) or both. An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, an offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(G) or both, and an offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(d) An offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) is punishable for a person other than an individual under Section 7.187(1)(D). If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), the offense is punishable under Section 7.187(1)(E). An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.163. VIOLATIONS RELATING TO HAZARDOUS WASTE AND ENDANGERMENT.

(a) A person commits an offense if:

(1) acting intentionally or knowingly, the person transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury;

(2) acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency;

(3) acting intentionally or knowingly with respect to the person's

conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency; or

(4) acting recklessly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency.

(b) An offense under Subsection (a)(1) is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. An offense under Subsection (a)(1) is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(F) or Section 7.187(2)(J) or both. If an offense committed by a person other than an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(G). For purposes of Subsection (a)(1), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under Subsection (a)(2) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(2) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed under Subsection (a)(2) results in death or serious bodily injury to another person, an individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(2) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(d) An offense under Subsection (a)(3) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(3) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or

Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(e) An offense under Subsection (a)(4) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. An offense under Subsection (a)(4) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(E) or both. If an offense committed by a person other than an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Sec. 7.164. VIOLATIONS RELATING TO MEDICAL WASTE: LARGE GENERATOR.

(a) A person commits an offense if the person is a large quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of a material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(I) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable by Section 7.187(1)(C).

Sec. 7.165. VIOLATIONS RELATING TO MEDICAL WASTE: SMALL GENERATOR.

(a) A person commits an offense if the person is a small quantity generator

and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(A). If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Sec. 7.166. VIOLATIONS RELATING TO TRANSPORTATION OF MEDICAL WASTE.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any medical waste to a location that does not have all required permits;

(2) transports without a manifest, or causes or allows to be transported without a manifest, any medical waste required to be accompanied by a manifest under rules adopted by the appropriate regulatory agency; or

(3) operates a vehicle that is transporting medical waste, or that is authorized to transport medical waste, in violation of a rule adopted by the appropriate regulatory agency, including cleaning and safety regulations, that specifically relates to the transportation of medical waste.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual

under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(F).

Sec. 7.167. FALSE STATEMENTS RELATING TO MEDICAL WASTE.

(a) A person commits an offense if the person knowingly:

(1) makes a false material statement, or knowingly causes or knowingly allows to be made a false material statement, to a person who prepares a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency; or

(2) omits material information, or causes or allows material information to be omitted, from a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Sec. 7.168. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, medical waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(F) or Section 7.187(2)(J) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by a person other than an individual under this section results in death or serious

bodily injury to another person, the offense is punishable under Section 7.187(1)(G).

Sec. 7.169. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of medical waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Sec. 7.170. INTENTIONAL OR KNOWING RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is done in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Sec. 7.171. RECKLESS RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT.

(a) A person commits an offense if the person, acting recklessly with respect to a person's conduct, releases or causes or allows the release of

a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Sec. 7.172. FAILURE OF SEWAGE SYSTEM INSTALLER TO REGISTER.

(a) A person commits an offense if the person violates Section 366.071, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Sec. 7.173. VIOLATION RELATING TO SEWAGE DISPOSAL.

(a) A person commits an offense if the person violates a rule adopted by the commission under Chapter 366, Health and Safety Code, or an order or resolution adopted by an authorized agent under Subchapter C, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE DISPOSAL SYSTEM.

(a) A person commits an offense if the person knowingly violates an order or resolution adopted by an authorized agent under Section 366.0515, Health and Safety Code.(b) An offense under this section is a Class C misdemeanor.

Sec. 7.174. VIOLATION OF SEWAGE DISPOSAL SYSTEM PERMIT PROVISION.

(a) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person before the owner of the system obtains a permit to construct, alter,

repair, or extend the on-site sewage disposal system as required by Subchapter D, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Sec. 7.175. EMERGENCY REPAIR NOT AN OFFENSE.

An emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(C), Health and Safety Code, is not an offense under Section 7.172, 7.173, or 7.174 if a written statement describing the need for the repair is provided to the commission or its authorized agent not later than 72 hours after the repair is begun.

Sec. 7.176. VIOLATIONS RELATING TO HANDLING OF USED OIL.

(a) A person commits an offense if the person:

(1) intentionally discharges used oil into:

(A) a sewer or septic tank; or

(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills, unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals;

(3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil within the state:

(A) in violation of standards or rules for the management of used oil; or

(B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter;

(4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(5) violates an order of the commission to cease and desist an activity prohibited by this section or a rule applicable to a prohibited activity; or

(6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.

(b) It is an exception to the application of this section that a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(c) It is an exception to the application of Subsection (a)(2) that the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(d) Except as provided by this subsection, an offense under this section is punishable under Section 7.187(1)(B) or Section 7.187(2)(F), or both. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C) or Section 7.187(2)(H) or both.

Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:

(1) Section 382.0518(a), Health and Safety Code;

(2) Section 382.054, Health and Safety Code;

(3) Section 382.056(a), Health and Safety Code;

(4) Section 382.058(a), Health and Safety Code; or,

(5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Sec. 7.178. FAILURE TO PAY FEES UNDER CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly does not pay a fee required by Chapter 382, Health and Safety Code, or by a rule adopted or an order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Sec. 7.179. FALSE REPRESENTATIONS UNDER CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits material information from, or knowingly alters,

conceals, or does not file or maintain a notice, application, record, report, plan, or other document required to be filed or maintained by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.180. FAILURE TO NOTIFY UNDER CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly does not notify or report to the commission as required by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.181. IMPROPER USE OF MONITORING DEVICE.

(a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use a required monitoring device; tampers with, modifies, or disables a monitoring device; or falsifies, fabricates, or omits data from a monitoring device, unless the act is done in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT.

(a) A person commits an offense if the person recklessly, with respect to the person's conduct, emits an air contaminant that places another person in imminent danger of death or serious bodily injury, unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E).

Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person intentionally or knowingly,

with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing another person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F).

Sec. 7.1831. VIOLATION OF LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS.

(a) A person commits an offense if the person violates a rule adopted by the commission concerning locally enforced motor vehicle idling limitations.

(b) Notwithstanding any other law, an offense under this section is a Class C misdemeanor.

Sec. 7.184. VIOLATIONS RELATING TO LOW-LEVEL RADIOACTIVE WASTE.

(a) A person commits an offense if the person:

(1) intentionally or knowingly violates a provision of Chapter 401, Health and Safety Code, other than the offense described by Subdivision (2); or

(2) intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under Chapter 401, Health and Safety Code.

(b) Except as provided by this subsection, an offense under Subsection (a)(1) is a Class B misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(1), the offense is a Class A misdemeanor.

(c) Except as provided by this subsection, an offense under Subsection (a)(2) is a Class A misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(2), the offense is punishable under Section 7.187(1)(D) or Section 7.187(2)(D) or both.

Sec. 7.185. KNOWING OR INTENTIONAL UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES.

(a) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided by Section 361.451, Health and Safety Code.

(b) An offense under this section is a Class A misdemeanor.

Sec. 7.1851. VIOLATIONS RELATING TO COMMUNITY RIGHT-TO-KNOW LAWS.

(a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by Chapter 505 or 506, Health and Safety Code, commits an offense punishable by a fine of not more than $25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Sec. 7.186. SEPARATE OFFENSES.

Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Sec. 7.187. PENALTIES.

(a) Except as provided by Subsection (b), a person convicted of an offense under this subchapter is punishable by:

(1) a fine, as imposed under the section creating the offense, of:

(A) not more than $1,000;

(B) not less than $1,000 or more than $50,000;

(C) not less than $1,000 or more than $100,000;

(D) not less than $1,000 or more than $250,000;

(E) not less than $2,000 or more than $500,000;

(F) not less than $5,000 or more than $1,000,000;

(G) not less than $10,000 or more than $1,500,000; or

(H) not more than twice the amount of the required fee;

(2) confinement for a period, as imposed by the section creating the offense, not to exceed:

(A) 30 days;

(B) 90 days;

(C) 180 days;

(D) one year;

(E) two years;

(F) five years;

(G) 10 years;

(H) 15 years;

(I) 20 years; or

(J) 30 years; or

(3) both fine and confinement, as imposed by the section creating the offense.

(b) Notwithstanding Section 7.177(a)(5), conviction for an offense under Section 382.018, Health and Safety Code, is punishable as:

(1) a Class C misdemeanor if the violation is a first violation and does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes;

(2) a Class B misdemeanor if the violation is a second or subsequent violation and:

(A) the violation does not involve the burning of:

(i) substances described by Subdivision (1); or

(ii) insulation on electrical wire or cable, treated lumber, plastics, non-wood construction or demolition materials, furniture, carpet, or items containing natural or synthetic rubber; or

(B) the violation involves the burning of substances described by Paragraph (A)(ii) and none of the prior violations involved the burning of substances described by Subdivision (1) or Paragraph (A)(ii); or

(3) a Class A misdemeanor if the violation:

(A) involves the burning of substances described by Subdivision (1); or

(B) is a second or subsequent violation and involves the burning of substances described by Subdivision (2)(A)(ii) and one or more of the prior violations involved the burning of substances described by Subdivision (1) or (2)(A)(ii).

[Note: Please consult with your County Attorney for guidance before filing misdemeanor burning cases as C Misdemeanors since Section 382.018, Health and Safety Code contains no "offenses" that can be violated.]

Sec. 7.188. REPEAT OFFENSES.

If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Sec. 7.189. VENUE.

Venue for prosecution of an alleged violation under this subchapter is in:

(1) the county in which the violation is alleged to have occurred;

(2) the county where the defendant resides;

(3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; or

(4) Travis County.

Sec. 7.190. DISPOSITION OF FINES.

A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more

of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Sec. 7.191. NOTICE OF CONVICTION.
In addition to a sentence that may be imposed under this subchapter, a person other than an individual that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court considers appropriate.

Sec. 7.192. JUDGMENT OF CONVICTION.
On conviction under this subchapter, the clerk of the court in which the conviction is returned shall send a copy of the judgment to the commission.

Sec. 7.193. PEACE OFFICERS.
For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are peace officers. Those agents and employees are empowered to enforce this subchapter the same as any other peace officer and for that purpose have the powers and duties of peace officers assigned by Chapter 2, Code of Criminal Procedure.

Sec. 7.194. ALLEGATIONS.
In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

Sec. 7.195. SUMMONS AND ARREST.
(a) After a complaint is filed or an indictment or information presented against a private corporation under this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made on the secretary of state, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 30 days after the secretary of state is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

Sec. 7.196. SERVICE OF SUMMONS.

(a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice president of the corporation.

(b) If the peace officer certifies on the return that the peace officer diligently but unsuccessfully attempted to effect service under Subsection (a) or if the corporation is a foreign corporation that has no certificate of authority, the peace officer shall serve the summons on the secretary of state. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and the disposition of each summons served under Subsection (b) together with the return receipt.

Sec. 7.197. ARRAIGNMENT AND PLEADINGS.

In any criminal action instituted against a private corporation under this subchapter:

(1) appearance is for the purpose of arraignment; and

(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Sec. 7.198. APPEARANCE.

(a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons or appears but does not plead, the corporation is considered to be present in person for all purposes, and the court shall enter a plea of not guilty on the corporation's behalf and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, the corporation is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

Sec. 7.199. FINE TREATED AS JUDGMENT IN CIVIL ACTION.

If a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the person, and the fine shall be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action.

Sec. 7.200. EFFECT ON CERTAIN OTHER LAWS.
Conduct punishable as an offense under this subchapter that is also punishable under another law may be prosecuted under either law.

Sec. 7.201. DEFENSE EXCLUDED.
It is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

Sec. 7.202. PROOF OF KNOWLEDGE.
In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury under Section 7.168, 7.169, 7.170, or 7.171, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW.
(a) This section is applicable to criminal prosecution of alleged environmental violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. This section does not apply to an alleged environmental violation that clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation by a person holding a permit issued by the commission or an employee of that person of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction to a prosecuting attorney for criminal prosecution, the peace officer shall notify the commission in writing of the alleged criminal environmental violation and include with the notification a report describing the facts and circumstances of the alleged criminal environmental violation. This section does not prohibit a peace officer from issuing a citation or making an arrest.

(c) As soon as practicable and in no event later than the 45th day after receiving a notice and report under Subsection (b), the commission shall evaluate the report and determine whether an alleged environmental violation exists and whether administrative or civil remedies would

adequately and appropriately address the alleged environmental violation. In making its evaluation and determination, the commission shall consider the factors prescribed in Section 7.053. If the commission does not make a determination within the 45-day period required by this subsection:

(1) the appropriate prosecuting attorney may bring an action for criminal prosecution; and (2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

(d) If the commission determines that an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate to address the violation, the commission shall notify the peace officer in writing of the reasons why administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution, and the prosecuting attorney may proceed with the criminal prosecution of the alleged violation. In all other cases, the commission shall issue written notification to the peace officer that the alleged environmental violation is to be resolved through administrative or civil means by the appropriate authorities and the reasons why administrative or civil remedies are adequate or appropriate. A prosecuting attorney may not prosecute an alleged violation if the commission determines that administrative or civil remedies are adequate and appropriate.

(e) Any fine, penalty, or settlement recovered through a prosecution subject to this section and brought in the name and by authority of the State of Texas, whether recovered through any form of pretrial resolution, plea agreement, or sentencing after trial, shall be apportioned 70 percent to the state to cover the costs of instituting the procedures and requirements of Subsections (a)-(d) and 30 percent to any local government significantly involved in prosecuting the case. In a case where the procedures described in this section do not apply, the provisions of Section 7.190 apply.

SUBCHAPTER H. SUIT BY OTHERS

Sec. 7.351. CIVIL SUITS.

(a) Subject to Section 7.3511, if it appears that a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the

person who committed, is committing, or is threatening to commit the violation.

(b) Subject to Section 7.3511, if it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE.

(a) In this section:

(1) "Authorized agent" has the meaning assigned by Section 366.002, Health and Safety Code.

(2) "Person affected" has the meaning assigned by Section 401.003, Health and Safety Code.

(b) This section applies only to a claim for a civil penalty in a civil suit under this subchapter for a violation of a statute, rule, order, or permit described by Section 7.351.

(c) Before instituting any claim described by Subsection (b), a local government, a person affected, or an authorized agent shall provide to the attorney general and the executive director of the commission written notice of each alleged violation, the facts in support of the claim, and the specific relief sought.

(d) A local government, a person affected, or an authorized agent may institute a claim described by Subsection (b) on or after the 90th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 90th day after the date the notice is received the commission has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice.

(e) If a local government, a person affected, or an authorized agent discovers a violation that is within 120 days of the expiration of the limitations period described in Section 7.360, the local government, person affected, or authorized agent may institute a claim described by Subsection (b) on or after the 45th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 45th day after the date the notice is received the commission has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice. In the circumstances described by this subsection, in addition to providing

the notice required by Subsection (c), the local government, person affected, or authorized agent must:

(1) provide a copy of the notice by certified mail or hand delivery to the chief of the division of the attorney general's office responsible for handling environmental enforcement claims; and

(2) include with the copy of the notice under Subdivision (1) a statement providing that the copy of the notice is being provided pursuant to this subsection.

Sec. 7.352. RESOLUTION REQUIRED.

In the case of a violation of Chapter 26 of this code or Chapter 382, Health and Safety Code, a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Sec. 7.353. COMMISSION NECESSARY PARTY.

In a suit brought by a local government under this subchapter, the commission is a necessary and indispensable party.

Sec. 7.354. COSTS AND FEES.

A penalty collected in a suit under this subchapter for a violation of Chapter 28 of this code or Chapter 401, Health and Safety Code, shall be paid to the state. If the suit is brought by a local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, the court shall include in any final judgment in favor of the local government or affected person an award to cover reasonable costs and attorney's fees.

Sec. 7.357. PROSECUTION.

This section repealed by 85th Legislature, effective September 1, 2017

Sec. 7.358. OTHER REQUIREMENTS.

In the case of a violation of Chapter 1903, Occupations Code, the regulatory authority of any local government may require compliance with any reasonable inspection requirements or ordinances or regulations designed to protect the public water supply and pay any reasonable fees imposed by the local government relating to work performed within its jurisdiction.

Sec. 7.359. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF CIVIL PENALTY.

In determining the amount of a civil penalty to be assessed in a suit brought by a local government under this subchapter, the trier of fact shall consider the factors described by Section 7.053.

Sec. 7.360. LIMITATIONS.

A suit for a civil penalty that is brought by a local government under this subchapter must be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation:

(1) notifies the commission in writing of the violation; or

(2) receives a notice of enforcement from the commission with respect to the alleged violation.

TEXAS WATER CODE
CHAPTER 29. OIL AND GAS WASTE HAULERS

SELECTED PROVISIONS

Sec. 29.002. DEFINITIONS.
In this chapter:

(1) "Person" means an individual, association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative of any kind.

(2) "Railroad commission" means the Railroad Commission of Texas.

(3) "Oil and gas waste" means oil and gas waste as defined by Section 91.1011, Natural Resources Code, and includes water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

(4) “Hauler" means a person who transports oil and gas waste for hire by any method other than by pipeline.

SUBCHAPTER C. COMMISSION AUTHORITY

Sec. 29.031. RULEMAKING POWER.
The railroad commission shall adopt rules to effectuate the provisions of this chapter.

SUBCHAPTER D. OFFENSES; PENALTIES

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.

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.

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.

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.

(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.

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

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.

Sec. 29.047. ADMINISTRATIVE PENALTY.

(a) If a person violates the provisions of this chapter or a rule, order, license, permit, or certificate issued under this chapter, the person may be assessed a civil penalty by the railroad commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the railroad commission shall consider the permittee's history of previous violations of this chapter, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the permittee or person charged.

SUBCHAPTER E. CIVIL ENFORCEMENT

Sec. 29.051. CIVIL PENALTY.

(a) A person who violates this chapter, a rule or order of the railroad commission adopted under this chapter, or a term, condition, or provision of a permit issued under this chapter, is subject to a civil penalty of not to exceed $10,000 for each offense. Each day a violation is committed is a separate offense.

(b) An action to recover the penalty under Subsection (a) of this section may be brought by the railroad commission in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

Sec. 29.052. INJUNCTION.

The railroad commission may enforce this chapter, a valid rule or order made under this chapter, or a term or condition of a permit issued by the railroad commission under this chapter by injunction or other appropriate remedy. The action may be brought in a court of competent jurisdiction in the county in which the offending activity has occurred, in which the defendant resides, or in Travis County.

TEXAS NATURAL RESOURCES CODE
CHAPTER 91. PROVISIONS GENERALLY APPLICABLE

SELECTED PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

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.

Sec. 91.003. ADDITIONAL ENFORCEMENT AUTHORITY.

(a) In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the manner and subject to the conditions provided in Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief as provided by those chapters.

(b) If the enforcement authority in Section 81.054, Natural Resources Code, is used to institute a civil action alleging a violation of an NPDES permit issued under this chapter, the attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

SUBCHAPTER D. PREVENTION OF POLLUTION

Sec. 91.101. RULES AND ORDERS.

To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) 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;

(3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this section.

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:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject

to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(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.

Sec. 91.1012. ACCESS TO PROPERTY AND RECORDS.

Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the quality of water in the state, to inspect and investigate conditions relating to development of rules, orders, or permits issuable under Section 91.101 of this code, to monitor compliance with a rule, permit, or other order of the commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

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.

SUBCHAPTER K. SALTWATER DISPOSAL PITS

Sec. 91.451. DEFINITION.

In this subchapter, "saltwater disposal pit" means a collecting pit on the surface of the ground used to store or evaporate oil field brines, geothermal resource water, or other mineralized water.

Sec. 91.452. PROHIBITED ACTIVITY.

Except as provided by this subchapter, a person conducting oil and gas development or production operations, geothermal operations, or underground hydrocarbon storage operations may not use a saltwater disposal pit for storage or evaporation of oil field brines.

Sec. 91.453. COMMISSION AUTHORIZED.

(a) On written application, the commission or its designated employee may administratively authorize a person to use a saltwater disposal pit on a temporary emergency basis.

(b) On written application, the commission or its designated employee may administratively authorize a person to use an impervious surface pit in

conjunction with a geothermal operation, an underground hydrocarbon storage operation, or an approved saltwater disposal operation.

(c) In cases where it may be conclusively shown that use of a saltwater disposal pit can cause no pollution of surrounding productive agricultural land and no pollution of ground or surface water supplies, either because of the absence of such waters, or due to physical isolation of such waters by naturally occurring impervious barriers, the commission or its designated employee may administratively authorize a person to use a saltwater disposal pit

(d) An authorization under this section must be in writing and must state the conditions under which any pit may be operated.

Sec. 91.454. REMOVAL OF AUTHORIZED PITS.

(a) A person who is authorized to operate a saltwater disposal pit under Section 91.453 of this code shall close the pit within 45 days after being ordered to close the pit by the commission; provided that the commission may grant an extension or extensions for a reasonable period or periods of time on a showing of good cause or upon request for an extension by the surface owner or owners of the land upon which the pit is situated.

(b) A saltwater disposal pit must be closed in compliance with this subchapter and rules, standards, and specifications adopted by the commission.

(c) In closing a saltwater disposal pit, the person authorized to operate the pit shall remove all saltwater and wastes and shall backfill and compact in compliance with commission-approved procedures.

Sec. 91.455. RULES, STANDARDS, AND SPECIFICATIONS.

(a) The commission shall adopt rules that:

(1) define the procedures for obtaining authorization to operate a saltwater disposal pit;

(2) define the conditions under which authorizations for saltwater disposal pits will be granted;

(3) establish standards for saltwater disposal pits authorized by the commission;

(4) provide for standards for the proper closing of saltwater disposal pits authorized by the commission; and

(5) provide other standards, procedures, and requirements necessary to carry out this subchapter.

(b) The commission, by rule, shall require:

(1) liner specifications and installation procedures that are adequate to insulate a saltwater disposal pit; and

(2) the draining, cleaning, and closing of saltwater disposal pits.

Sec. 91.456. INJUNCTIVE RELIEF.

If a person is operating a saltwater disposal pit in violation of this subchapter or the commission's rules, standards, or specifications, the commission may have the attorney general institute a suit in a district court in the county in which the saltwater disposal pit is located for injunctive relief to restrain the person from continuing to operate the pit in violation of this subchapter or the rules, standards, or specifications of the commission.

Sec. 91.457. REMOVAL OF UNAUTHORIZED PIT.

(a) The commission may order a person who is operating a saltwater disposal pit in violation of this subchapter to close the pit in compliance with this subchapter and commission rules, standards, and specifications, at the pit operator's own expense.

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

Sec. 91.458. CRIMINAL PENALTY.

(a) A person who violates Section 91.452 of this code or an order of the commission under Subsection (a), Section 91.457, commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 91.459. CIVIL PENALTY.

(a) A person who violates this subchapter or a rule, standard, or specification of the commission or who fails to close a saltwater disposal pit in compliance with this subchapter, a rule, standard, or specification of the commission, an order of the commission, or the authorization for the pit is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation or failure to comply.

(b) The attorney general shall recover the civil penalty provided by Subsection (a) of this section in a court of competent jurisdiction.

(c) Any costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and cleanup fund.

(d) Repealed by Acts 1991, 72nd Leg., ch. 603, Sec. 32(1), eff. Sept. 1, 1991.

SUBCHAPTER N. OIL AND GAS HAZARDOUS WASTE

Sec. 91.601. DEFINITIONS.

In this subchapter:

(1) "Oil and gas hazardous waste" means oil and gas waste that is a hazardous waste as defined by the administrator of the United States

Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(2) "Oil and gas waste" means oil and gas waste as defined in Section 91.1011 of this chapter.

Sec. 91.604. CRIMINAL PENALTY.

(a) A person who knowingly violates a rule, order, or permit of the commission issued under this subchapter commits an offense.

(b) An offense under this section is punishable by imprisonment for up to six months, by a fine of up to $10,000 for each day the violation is committed, or by both.

(c) Venue for prosecution under this section is in the county in which the violation is alleged to have occurred.

TITLE 16 TEXAS ADMINISTRATIVE CODE
Sec. 3.8 WATER PROTECTION

COMMONLY REFERRED TO AS “Statewide Rule 8”

SELECTED PROVISIONS

(B) Improper disposal prohibited. No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:

(i) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and

(ii) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.

(6) Permits.

(A) Standards for permit issuance. A permit to maintain or use a pit for storage of oil field fluids or oil and gas wastes may only be issued if the commission determines that the maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. A permit to dispose of oil and gas wastes by any method, including disposal into a pit, may only be issued if the commission determines that the disposal will not result in the waste of oil, gas, or geothermal resources or the pollution

of surface or subsurface water. A permit to maintain or use any unlined brine mining pit or any unlined pit, other than an emergency saltwater storage pit, for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters may only be issued if the commission determines that the applicant has conclusively shown that use of the pit cannot cause pollution of surrounding productive agricultural land nor pollution of surface or subsurface water, either because there is no surface or subsurface water in the area of the pit, or because the surface or subsurface water in the area of the pit would be physically isolated by naturally occurring impervious barriers from any oil and gas wastes which might escape or migrate from the pit. Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the waste of oil, gas, or geothermal resources and the pollution of surface and subsurface waters. A permit to maintain or use a pit will state the conditions under which the pit may be operated, including the conditions under which the permittee shall be required to dewater, backfill, and compact the pit. Any permits issued pursuant to this paragraph may contain requirements concerning the design and construction of pits and disposal facilities, including requirements relating to pit construction materials, dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to maintain or use any lined brine mining pit or any lined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters will contain requirements relating to liner material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing liners.

(B) Application. An application for a permit to maintain or use a pit or to dispose of oil and gas wastes shall be filed with the commission in Austin. The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the original application is mailed or delivered to the commission in Austin. A permit application shall be considered filed with the commission on the date it is received by the commission in Austin. When a commission-prescribed application form exists, an applicant shall make application on the prescribed form according to the instructions on such form. The director may require the applicant to provide the commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water.

(C) Notice. The applicant shall give notice of the permit application to the surface owners of the tract upon which the pit will be located or upon which the disposal will take place. When the tract upon which

the pit will be located or upon which the disposal will take place lies within the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city clerk or other appropriate official. Where disposal is to be by discharge into a watercourse other than the Gulf of Mexico or a bay, the applicant shall also give notice to the surface owners of each waterfront tract between the discharge point and 1/2 mile downstream of the discharge point except for those waterfront tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront tracts within 1/2 mile of the discharge point lie within the corporate limits of an incorporated city, town, or village, the applicant shall give notice to the city clerk or other appropriate official. Notice of the permit application shall consist of a copy of the application together with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission. The applicant shall mail or deliver the required notice to the surface owners and the city clerk or other appropriate official on or before the date the application is mailed or delivered to the commission in Austin. If, in connection with a particular application, the director determines that another class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority, should receive notice of the application, the director may require the applicant to mail or deliver notice to members of that class. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required by this subparagraph to be notified, then the director may authorize the applicant to notify such persons by publishing notice of the application. The director shall determine the form of the notice to be published. The notice shall be published once each week for two consecutive weeks by the applicant in a newspaper of general circulation in the county where the pit will be located or the disposal will take place. The applicant shall file proof of publication with the commission in Austin. The director will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required by this subparagraph to be notified if the applicant has examined the current county tax rolls and investigated other reliable and readily available sources of information.

(D) Protests and hearings. If a protest from an affected person is made to the commission within 15 days of the date the application is filed, then a hearing shall be held on the application after the applicant requests a hearing. If the director has reason to believe that a person entitled to notice of an application has not received such notice within 15 days of the date an application is filed with the commission, then the director shall not take action on the application until reasonable efforts have been made to give such person notice of the application and an opportunity to file a protest to the application. If the director

determines that a hearing is in the public interest, a hearing shall be held. A hearing on an application shall be held after the commission provides notice of hearing to all affected persons, or other persons or governmental entities who express an interest in the application in writing. If no protest from an affected person is received by the commission, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the hearings examiner shall recommend a final action by the commission.

(E) Modification, suspension, and termination. A permit granted pursuant to this paragraph, or a renewal permit granted pursuant to paragraph (7) of this subsection, or a permit which remains in effect pursuant to paragraph (7)(A) or (B) or (8) of this subsection, may be modified, suspended, or terminated by the commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:

(i) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(ii) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(iii) the permittee has violated the terms and conditions of the permit or commission rules;

(iv) the permittee misrepresented any material fact during the permit issuance process;

(v) the permittee failed to give the notice required by the commission during the permit issuance process;

(vi) a material change of conditions has occurred in the permitted operations, or the information provided in the application has changed materially.

(F) Emergency permits. If the director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the director may issue an emergency permit. An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the commission in the appropriate district office. Notice of the application is not required. If warranted by the nature of the emergency, the director may issue an emergency permit based upon a verbal application, or the director may verbally authorize an activity before issuing a written permit authorizing that activity. An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of an

emergency permit shall be governed by the provisions of subparagraphs (A)-(E) of this paragraph.

(G) Minor permits. If the director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An application for a minor permit shall be filed with the commission in the appropriate district office. Notice of the application shall be given as required by the director. The director may determine that notice of the application is not required. A minor permit is valid for 30 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of a minor permit shall be governed by the provisions of subparagraphs (A)-(E) of this paragraph.

(7) Existing permits and pits (other than existing brine mining pit permits and brine mining pits).

(A) Existing permits. Each permit to maintain or use a lined or unlined pit for storage or disposal of oil field brines, geothermal resource water, or other mineralized waters, which has been issued by the commission prior to the effective date of this subsection, shall expire 180 days after the effective date of this subsection. Every other permit to store oil field fluids or oil and gas wastes or to dispose of oil and gas wastes, which permit has been issued by the commission prior to the effective date of this subsection, shall remain in effect until modified, suspended, or terminated by the commission pursuant to paragraph (6)(E) of this subsection. The permits which will expire pursuant to this paragraph include, but are not limited to, permits for the following types of pits: saltwater disposal pits, emergency saltwater storage pits, skimming pits, and brine pits.

(B) Renewal permits. Any person holding a permit scheduled to expire pursuant to subparagraph (A) of this paragraph may apply to the commission for renewal of the permit. If a person makes timely and sufficient application for renewal of a permit, then, notwithstanding the provisions of subparagraph (A) of this paragraph, the permit shall not expire until final commission action renewing or denying renewal of the permit. An application for renewal of a permit shall be filed with the commission in Austin within 180 days of the effective date of this subsection. No notice of the application is required. The director may administratively approve an application for renewal of a permit. No hearing shall be held on an application for renewal of a permit unless

the applicant requests a hearing or the director determines that a hearing is necessary. No renewal permit will be issued unless the standards for permit issuance stated in paragraph (6)(A) of this subsection have been met.

(C) Operating existing unpermitted pits. If, as of the effective date of this subsection, a person is maintaining or using a pit, which is required by this subsection to be permitted but which was not required to be permitted prior to the effective date of this subsection, then the person maintaining or using the pit may continue to maintain or use the pit for 180 days after the effective date of this subsection. If a person makes timely and sufficient application for a permit to maintain or use such an existing but unpermitted pit, then the person may continue to use the pit until final commission action denying the permit. An application for a permit shall be considered timely if it is filed with the commission within 180 days of the effective date of this subsection. The issuance or denial of the permit shall be governed by the provisions of paragraph (6) of this subsection. The unpermitted pits, whose use or maintenance is authorized by this subparagraph, include, but are not limited to, the following types of pits: drilling fluid storage pits, gas plant evaporation/retention pits, and washout pits.

(D) Backfilling existing pits. If, as of the effective date of this subsection, a person is maintaining or using a basic sediment pit which does not meet the 50-barrel size limitation of paragraph (4)(C) of this subsection, then that person shall dewater, backfill, and compact the pit or rebuild the pit to comply with the 50-barrel size limitation within 180 days of the effective date of this subsection. Any person who, as of the effective date of the subsection, is maintaining or using a lined or unlined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters, which pit was permitted prior to the effective date of this subsection, shall dewater, backfill, and compact the pit within 270 days of the effective date of this subsection unless the person applies for a renewal permit pursuant to subparagraph (B) of this paragraph. If a person applies for a renewal of a permit to maintain or use a lined or unlined pit for storage or disposal of oil filled brines, geothermal resource waters, or other mineralized waters, the director may extend the time for dewatering, backfilling, and compacting the pit to up to 90 days after final commission action denying renewal of the permit. If, as of the effective date of this subsection, a person is maintaining or using a pit, which is required by this subsection to be permitted but which was not required to be permitted prior to the effective date of this subsection, then the person maintaining or using the pit shall dewater, backfill, and compact the pit within 270 days of the effective date of this subsection unless the person applies for a permit to maintain or use the pit within the 180-day period allowed by subparagraph (C) of this paragraph. If a person applies for such a permit to maintain or

use a previously unpermitted pit, the director may extend the time for dewatering, backfilling, and compacting the pit to up to 90 days after final commission action denying issuance of the permit. The director may require that pits required to be backfilled by this subparagraph be dewatered, backfilled, and compacted sooner than the time prescribed by this subparagraph if the director determines that oil and gas wastes are likely to escape from the pit or that the pit is being used for improper disposal of oil and gas wastes.

(8) Existing brine mining pit permits and brine mining pits. Existing brine mining pit permits and brine mining pits will be governed by the provisions of this paragraph rather than the provisions of paragraph (7) of this subsection.

(A) Existing brine mining pit permits. Any permit to maintain or use a brine mining pit, which permit has been issued by the commission prior to January 6, 1987, will remain in effect until modified, suspended, or terminated by the commission pursuant to paragraph (6)(E) of this subsection.

(B) Existing brine mining pits. If, as of January 6, 1987, a person is maintaining or using a brine mining pit and has not obtained a permit from the commission to maintain or use the pit, then the person may continue to use the pit through January 30, 1987. If the person makes timely and sufficient application for a permit to maintain or use the pit, then the person may continue to use the pit until final commission action denying the permit. An application for a permit to maintain or use the pit will be considered timely if it is filed with the commission by January 30, 1987. The issuance or denial of the permit will be governed by the provisions of paragraph (6) of this subsection. Unless the person maintaining or using the pit makes timely and sufficient application for a permit to maintain or use the pit, the person shall close the pit by May 1, 1987. If the person maintaining or using the pit makes timely and sufficient application for a permit to maintain or use the pit, but the permit is denied, then the person shall close the pit within 90 days after final commission action denying the permit. A pit required by this subparagraph to be closed shall be closed in accordance with a plan approved by the director. A closure plan must be submitted to the director for approval at least 60 days before the pit is required to be closed. The closure plan must describe the manner in which the pit will be dewatered or emptied, backfilled, and compacted. The director may require that a pit required to be closed by this subparagraph be closed sooner than the time prescribed by this subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.

(9) Used oil. Used oil as defined in §3.98 of this title (relating to

Standards for Management of Hazardous Oil and Gas Waste), shall be managed in accordance with the provisions of 40 CFR, Part 279.

(f) Oil and gas waste haulers.

(1) A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USCA §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), is excluded from this subsection. This subsection is not applicable to the hauling of oil and gas wastes for recycling. For purposes of this subsection, injection of salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as recycling. A person who has a salt water hauler permit does not need to apply for an oil and gas waste hauler permit until the person is scheduled to file an application for permit renewal.

(A) Application for an oil and gas waste hauler permit will be made on the commission-prescribed form, and in accordance with the instructions thereon, and must be accompanied by:

(i) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements) (Statewide Rule 78);

(ii) vehicle identification information to support commission issuance of an approved vehicle list;

(iii) an affidavit from the operator of each commission-permitted disposal system the hauler intends to use stating that the hauler has permission to use the system; and

(iv) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation.

(B) An oil and gas waste hauler permit may be issued for a term not to exceed one year, subject to renewal by the filing of an application for permit renewal and the required application fee for the next permit period. The term of an oil and gas waste hauler permit will be established in accordance with a schedule prescribed by the director to allow for the orderly and timely renewal of oil and gas waste hauler permits on a staggered basis.

(C) Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit which provide:

(i) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.

(ii) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. (For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.)

(iii) 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. This permit authority is limited to those vehicles shown on the commission-issued list of approved vehicles.

(iv) This permit is issued pursuant to the information furnished on the application form, and any change in conditions must be reported to the commission on an amended application form. The permit authority will be revised as required by the amended application.

(v) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.

(vi) This permit authorizes the permittee to use commission-permitted disposal systems for which the permittee has submitted affidavits from the disposal system operators stating that the permittee has permission to use the systems. These disposal systems are listed as an attachment to the permit. This permit also authorizes the permittee to use a disposal system operated under authority of a minor permit issued by the commission without submitting an affidavit from the disposal system operator. In addition, this permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title (relating to Standards for the Management of Hazardous Oil and Gas Wastes), provided the shipment is accompanied by a manifest. Finally, this permit authorizes the transportation of oil and gas waste to a disposal facility permitted by another agency or another state provided the commission has granted separate authorization for the disposal.

(vii) The permittee must file an application for a renewal permit, using the permittee's assigned permit number, before the expiration date specified in this permit.

(viii) The permittee must compile and keep current a list of all persons by whom the permittee is hired to haul and dispose of oil and gas waste, and furnish such list to the commission upon request.

(ix) 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.

(x) Each vehicle must be made available for inspection upon request by commission personnel.

(2) A record shall be kept by each oil and gas waste hauler showing daily oil and gas waste hauling operations under the permitted authority.

(A) Such daily record shall be dated and signed by the vehicle driver and shall show the following information:

(i) identity of the property from which the oil and gas waste is hauled;

(ii) identity of the disposal system to which the oil and gas waste is delivered;

(iii) the type and volume of oil and gas waste received by the hauler at the property where it was generated; and

(iv) the type and volume of oil and gas waste transported and delivered by the hauler to the disposal system.

(B) Such record shall be kept open for the inspection of the commission or its representatives.

(C) Such record shall be kept on file for a period of three years from the date of operation and recordation.

(g) Recordkeeping.

(1) Oil and gas waste. When oil and gas waste is hauled by vehicle from the lease, unit, or other oil or gas property where it is generated to an off-lease disposal facility, the person generating the oil and gas waste shall keep, for a period of three years from the date of generation, the following records:

(A) identity of the property from which the oil and gas waste is hauled;

(B) identity of the disposal system to which the oil and gas waste is delivered;

(C) name and address of the hauler, and permit number (WHP number) if applicable; and

(D) type and volume of oil and gas waste transported each day to disposal.

(2) Retention of run tickets. A person may comply with the requirements of paragraph (1) of this subsection by retaining run tickets or other billing information created by the oil and gas waste hauler, provided the run tickets or other billing information contain all the information required by paragraph (1) of this subsection.

(3) Examination and reporting. The person keeping any records required by this subsection shall make the records available for examination and copying by members and employees of the commission during reasonable working hours. Upon request of the commission, the person keeping the records shall file such records with the commission.

(h) Penalties. Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) or violation of this section.

(i) Coordination between the Railroad Commission of Texas and the Texas Commission on Environmental Quality or its successor agencies. The Railroad Commission and the Texas Commission on Environmental Quality both have adopted by rule a memorandum of understanding regarding the division of jurisdiction between the agencies over wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil. The memorandum of understanding is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

30 TEXAS ADMINISTRATIVE CODE SECTION 328
SUBCHAPTER F: MANAGEMENT OF USED OR SCRAP TIRES
§§328.51 - 328.71

SELECTED PROVISIONS

§328.51. Purpose.
The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

§328.52. Applicability.
(a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that are as or more stringent than the regulations in this subchapter. All persons or facilities regulated by this subchapter must comply with all applicable local ordinances that are not inconsistent with the regulations in this subchapter. A local ordinance is not inconsistent with this subchapter if a regulated person or facility can simultaneously comply with both the state and local requirements.

(b) This subchapter applies to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials. This subchapter does not apply to whole

used or scrap tires that are classified as industrial solid waste.

(c) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by generators according to the requirements in §328.58 of this title (relating to Manifest System).

(d) Scrap tires that are off-the-road tires intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, or mining equipment are exempt from the time frame requirements to be split, quartered, or shredded when stored at a registered storage site or a permitted landfill. These tires must be shredded, split, or quartered prior to disposal in a manner acceptable to the executive director. The executive director may grant exceptions to this requirement as warranted by the circumstances.

§328.53. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

(4) Authorized scrap tire facility - A facility authorized to accept scrap tires including, but not limited to, a registered scrap tire storage site, scrap tire facility or permitted landfill.

(8) Generator - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

(9) Good used tire - A used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

(11) Land reclamation projects using tires (LRPUT) - A project to fill, rehabilitate, improve and/or restore already excavated, deteriorated or disturbed land, which uses no more than 50% by volume of tire pieces along with inert fill materials, for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use. Projects for the use of used or scrap tires or tire pieces as a component of an On-Site Sewage Facility as defined in §285.50 of this title (relating to General Requirements for Registration and Certification) are not included in this definition.

(18) Scrap tire - A whole tire that can no longer be used for its original intended purpose. A whole used tire that can be used, reused or legally modified to be reused, for its original intended purpose is not a scrap tire.

(19) Scrap tire facility - A facility that processes, conducts energy recovery or recycles used or scrap tires or tire pieces.

(20) Scrap tire storage site - A registered facility where more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight

equivalent tire pieces or any combination thereof) in enclosed and lockable containers. The term does not include a transportation facility or a scrap tire facility that stores on-site no more than a 30 calendar day supply of used or scrap tires or tire pieces.

(21) Scrap tire transporter - A registered entity that collects and transports used or scrap tires or tire pieces for storage, processing, recycling or energy recovery.

(24) Tire processor - A registered scrap tire facility where used or scrap tires or tire pieces are collected and shredded or baled for delivery to a scrap tire storage site, or to a facility that recycles, reuses or recovers the energy from the tire pieces. Mobile tire processing facilities shall be considered scrap tire facilities and required to comply with all applicable requirements contained in this subchapter relating to scrap tire facilities.

(26) Trailer - For the purposes of this chapter only, an enclosed, portable and lockable container for the storage of less than 2,000 used or scrap tires. This may include a trailer, railcar, roll-off container, or dumpster.

(27) Transportation facility - A facility such as a marine terminal, rail yard, or trucking facility where scrap tires or tire pieces may be stored for periods longer than 30 consecutive calendar days.

§328.54. General Requirements.

(a) An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration or permit.

(b) Before disposal, whole used or scrap tires may not be commingled with any other type of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles.

(c) Any permitted municipal solid waste landfill site may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only. Storage shall be above ground in controlled storage piles or in enclosed and lockable containers, pursuant to §328.61 of this title (relating to Design Requirements for Scrap Tire Storage Site). A permitted municipal solid waste landfill site shall not store tires or tire pieces in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers without prior written approval from the executive director or the commission. Approval of storage or processing shall be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) or an amendment under §305.62 of this title (relating to Amendment). The tire storage and/or processing activity shall not be conducted in a manner that will adversely affect operations of the municipal solid waste disposal site, or otherwise

endanger human health or the environment.

(d) All vehicles and equipment used for the collection and transportation of used or scrap tires or tire pieces, except for those vehicles listed in §328.57 of this title (relating to Transporter Requirements), shall be constructed, operated, and maintained to prevent loss of used or scrap tires or tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to prevent odors and insect breeding. Any vehicle or trailer used to transport used or scrap tires or tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall. Trailers or trucks used to transport used or scrap tires shall either be fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting any amount of tire pieces shall be covered with a tarp during transit.

(e) A person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires in a designated recycling collection area at a permitted landfill may be granted an exemption from shredding, splitting or quartering the scrap tires by the executive director, upon request.

§328.55. Registration Requirements.

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

§328.56. Generator Requirements.

(a) Generator registration requirements include the following.

(1) Generators storing more than 500 tires shall obtain a registration number from the executive director. The generator must contact the executive director, identify the business as a generator, provide the business name, tax identification number, mailing address, physical location, and the city and county where the generator is located.

(2) The generator shall notify the executive director within 15 days, in writing, of any changes to the generator information.

(b) Each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized

facility.

(c) Each generator shall use manifests, work orders, invoices or other records to document the removal and management of all scrap tires generated on-site.

(d) The following requirements apply to on-site storage by generators:

(1) Generators may store used or scrap tires or tire pieces at the location where they are generated, provided the total number of used or scrap tires does not exceed 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers.

(2) Generators who store used or scrap tires in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers shall be required to obtain a scrap tire storage registration pursuant to §328.55 of this title (relating to Registration Requirements);

(3) Retailers and wholesalers who sell good used tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, or has been designated on the manifest as removed for reuse by a registered transporter. Used tires that are to be resold as commodities, but are not sorted, marked, classified, and arranged in an organized manner for sale to the consumer, shall be considered as stockpiled scrap tires and the site shall be subject to registration as a scrap tire storage site; and

(4) Tires stored outside shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(5) Generators who store more than 500 used or scrap tires are exempt from the requirement to shred, split, or quarter the used or scrap tires provided that the tires are awaiting transport.

(e) A generator of used or scrap tires may transport its scrap tires between its own business locations or to an authorized facility without a transporter registration, but must still comply with all manifesting requirements in §328.58 of this title (relating to Manifest System) and record keeping requirements in §328.57 of this title (relating to Transporter Requirements).

§328.57. Transporter Requirements.

§328.58. Manifest System.

§328.59. Storage of Used or Scrap Tires or Tire Pieces.

(a) Applicability. This section establishes standards applicable to persons that store or intend to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more

than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers on any public or privately owned property. Persons that store used or scrap tires or tire pieces shall register in accordance with this subchapter. This subchapter does not apply to the use of tires in the storage, protection, or production of agricultural commodities.

§328.60. Scrap Tire Storage Site Registration.

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers at a facility shall be required to obtain a scrap tire storage site registration for that facility from the executive director pursuant to §328.55 of this title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

TITLE 30 TEXAS ADMINISTRATIVE CODE SECTION 111
SUBCHAPTER B OUTDOOR BURNING

TEXAS OUTDOOR BURNING RULE

Annotated by John Ockels (ockels@mac.com for discussion)

Sec. 111.201. General Prohibition

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director. The term “executive director,” as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

Note: This is the controlling provision of the rule. In first sentence, the state asserts the position of the Texas Clean Air Act that the State sets policy and laws concerning all aspects of outdoor burning in Texas. Outdoor burning in Texas must conform to this rule, TCEQ permits, and TCEQ orders. What this rule does is (1) prohibit all outdoor burning in Texas; and then, (2) list a series of exceptions to that general prohibition. For instance, when we get to the section on disposal fires in Sec. 111.209, there is an exception under which domestic waste — household trash — can be burned under some conditions. But there is no exception in the rule for burning wastes from commercial activities (house building or office remodeling, for example). So, if a person follows this rule, she will be able to burn household waste outdoors under some conditions but can never

burn commercial waste outdoors without having authority granted by the TCEQ. Burning commercial waste is therefore a violation of this rule … and a criminal violation of TWC Sec. 7.177(a)(5). That's the way this rule works throughout. If the outdoor burning is done in conformity with this rule (or a TCEQ permit or order), then the fire is "legal." But if there is no exception listed and no permit and no order, then the fire is in violation of this rule and therefore a criminal violation of TWC Sec. 7.177(a)(5).

Sec. 111.203. Definitions
Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Commission on Environmental Quality (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Extinguished--The absence of any visible flames, glowing coals, or smoke.

(2) Landclearing operation--The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access, or production. It does not include the maintenance burning of onsite property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include burning following clearing for ecological restoration.

(3) Neighborhood--A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.

(4) Practical alternative--An economically, technologically, ecologically, and logistically viable option.

(5) Prescribed burn--The controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

(6) Refuse--Garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses

(7) Structure containing sensitive receptor(s)--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "manmade structure" does not include such things as range fences, roads, bridges, hunting blinds, or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation that has potential to be damaged by smoke and heat, examples of which include, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving

plants.

Note: One of the "safety rules" we'll encounter in Sec. 111.219 will generally require smoke not to enter "structures containing sensitive receptors," unless there is an agreement in place. Rather than protect the "sensitive receptor" herself or itself, the rule protects the structure containing the sensitive receptor. We'll see below that some of these "safety rules" apply to some of the exceptions described in the various sections, but not every "safety rule" applies to all of the exceptions. This will make sense with further reading.

(8) Sunrise/Sunset--Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.
(9) Wildland--Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

Sec. 111.205. Exception for Fire Training

Note that this section does not require any of the seven "safety rules" listed in Sec. 111.219 be followed. Since this section is about training firefighters, I suppose the drafters of this rule thought that local fire chiefs would give due regard to the safety of any training. Occasionally a regional TCEQ administrative officer will attempt to impose a few of the safety rules that he or she thinks should be observed while conducting firefighter training. No doubt, these are all good ideas, but the rule currently imposes no requirement to follow any of the seven rules in Sec. 111.219. This is always a good source of interesting discussions between local firefighter management and some regional TCEQ offices. There is always room for different interpretations of a rule, but it is seldom appropriate to simply add provisions.

(a) Outdoor burning shall be authorized for training fire-fighting personnel when requested in writing and when authorized either verbally or in writing by the local air pollution control agency. In the absence of such local entities, the appropriate commission regional office shall be notified. The burning shall be authorized if notice of denial from the local air pollution control agency, or commission regional office is not received within 10 working days after the date of postmark or the date of personal delivery of the request.

(b) Facilities dedicated solely for fire-fighting training, at which training routinely will be conducted on a frequency of at least once per week, shall submit an annual written notification of intent to continue such training to the appropriate commission regional office and any local air pollution control agency.

(c) Facilities dedicated solely for fire-fighting training, at which training is conducted less than weekly, shall provide an annual written notification of intent, with a telephone or electronic facsimile notice 24 hours in advance of any scheduled training session. No more than one such notification is required for multiple training sessions scheduled within any one-week period, provided the initial telephone/facsimile notice includes all such sessions. Both the written and telephone notifications shall be submitted to the appropriate commission regional office and any local air pollution control agency.

(d) Authorization to conduct outdoor burning under this provision may be revoked by the executive director if the authorization is used to circumvent other prohibitions of this subchapter.

Note: Some communities like to burn structures to demolish them while pretending that they are firefighter training exercises. There is no exception in this rule that allows the routine burning of empty houses, barns, and other structures without a permit or an order from the TCEQ. These would be commercial disposal fires, which always require prior authorization. This "pretended firefighter training" burning has happened enough times in Texas that there is a warning against the practice. Continued "pretend firefighter training" fires will eventually result in the loss of the ability to train firefighters at all. I've always wondered, "What sort of training is it to stand there, hose in hand, and watch a building burn to the ground?" I'm sure there are good reasons to occasionally practice non-responding, but it's difficult to understand how that can be a good regular training. Firefighters could watch a structure burn to the ground without responding on YouTube.

Sec. 111.207. Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth

Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of Sec. 111.219(7) of this title (relating to General Requirements for Allowable Outdoor Burning).

Note: These are usually the sorts of fires that are the target of burn bans issued by commissioners' courts. Generally, these fires are perfectly fine, as long as "safety rule #7" — Sec. 111.219(7) — is followed. Note that the other six safety rules listed in Sec. 111.219 don't apply to these sorts of fires. You may want to look ahead at that section and see what some of these other rules are. They cover such things as burning at night, burning when the weather conditions don't support it, and other such things. Note that the safety rule at Sec. 111.219(7) has to do with burning dangerous items. When applied to

this section, it says such things as "You can't have a cooking fire using treated lumber" or "You can't burn a tire for warmth" or "You can't burn electrical insulation for recreational purposes." This prohibition makes perfect sense to me.

Sec. 111.209. Exception for Disposal Fires
Except as provided in Local Government Code, Sec. 352.082, outdoor burning is authorized for the following:

Note: This section discusses seven different types of disposal fires, from trash to animal carcass to brush. These seven types of disposal fires are allowed as exceptions to the general prohibition on outdoor burning. If you follow the details of the rule, you can have these types of disposal fires. However, if a particular type of disposal fire is not mentioned — such as a fire for the disposal of commercially generated waste — this type of burning is prohibited (unless the person has a permit or order from the TCEQ allowing the burning). Local Government Code, Sec. 352.082 refers to trash burning in some parts of rural Montgomery County. There's a brief discussion of this back in the main part of the book. Also note that the seven "safety rules" described in Sec. 111.219 do not all apply to each of the seven types of disposal fires allowed by this section. For example, in subsection (6) and (7) below, all seven of the safety rules of Sec. 111.219 seem to apply, but in subsection (4)(B) only four of the seven are mentioned. In the most widely discussed section — (1) which deals with burning domestic waste — none of the seven safety rules are mentioned at all.

(1) domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term "domestic waste" is defined in Sec. 101.1 of this title (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic waste that cannot be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances;

Note: The underlining is something we added for emphasis. This is the category of burning that gets the most questions. It amounts to folks in the unincorporated parts of most counties being able to legally burn their household trash, as long as they follow these provisions. The first sentence in this subsection — underlined above — is

probably the worst sentence ever written in the English language, but it is very important. Here are the concepts and decisions it contains:

1. It's talking about burning "domestic waste," not commercial. The rule nowhere allows burning commercial waste without a permit or order, so doing so is almost always illegal. The term "domestic waste" is defined in the third sentence, and essentially means waste generated from normal life in the household.

2. The waste must come from a place being used exclusively as a private residence … as opposed to some guy living in the back of a commercial garage burning everything that he generates.

3. The residence cannot be housing over three families, and I have no idea of the history of this provision. However, with increased immigration by workers sharing one residence, this may come into play.

4. Even if all of the rest of the provisions are met, burning can ONLY take place when the local government for the jurisdiction — the county commissioners' court or the city council — fails to (a) provide or (b) authorize waste collection. ***This is a point for frequent error.*** *It doesn't matter if trash collection trucks are covering the whole county, until the commissioners "provide" or "authorize" collection through a formal process, you can still burn domestic waste. All cities I know of have "provided" or "authorized" waste collection through formal action, so you can't legally burn domestic waste inside cities. Just a few counties have taken this step, however, and it hasn't always worked too well — increased illegal dumping is often the result. This provision is easily the most confused, but until the commissioners or council "provides" or "authorizes" waste collection, you can burn domestic waste.*

5. And finally, this only applies to waste generated from that one property: no bringing in the neighbor's domestic waste for a big community burn site.

6. During county burn bans, some commissioners' courts stop all domestic waste burning and others allow its continuance in barrels with a grated cover. The notion followed here is that "Since we can completely ban domestic waste burning all together anytime we want by "providing" or "authorizing" waste collection, we can regulate it during a burn ban."

The second sentence in this section of the rule stipulates that "collection" does not mean having the citizen haul his domestic waste to some common site but requires collection at the property where the waste is generated. The rest of this subsection provides closer definitions of what constitutes "domestic waste." If a person decides to burn his furniture and a few tires along with his trash, he's gone too far and has violated this provision.

(2) diseased animal carcass burning when burning is the most effective means of controlling the spread of disease;

(3) veterinarians in accordance with Texas Occupations Code, Sec. 801.361, Disposal of Animal Remains;

(4) on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth, by the owner of the property or any other person authorized by the owner, and when the material is generated only from that property:

Note: This is part of the provisions added in 2005 to THSC Sec. 382.018 that allows certain brush burning. Note that it breaks into two sections below: (A) gives the rule for counties that are part of a non-attainment area as far as National Ambient Air Quality Standards are concerned, and (B) is everywhere else. Most of Texas is considered by the TCEQ to meet NAAQS; in reality, most counties simply have not been tested and are assumed to be in compliance.

(A) in a county that is part of a designated nonattainment area or that contains any part of a municipality that extends into a designated nonattainment area; if the plant growth was generated as a result of right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists. Such burning is subject to the requirements of Sec. 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). Commission notification or approval is not required; or

Note: If the county (or a neighboring county with a city over-lapping the border) is non-attainment — doesn't meet federal standards as to its air quality — brush burning can only take place for "right-of-way maintenance, land clearing operations, and maintenance along water canals when no practical alternative to burning exists." Check the definition of "land clearing" in Sec. 111.203 and you'll see the statement "It does not include the maintenance burning of onsite property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities." In NAAQS non-attainment counties, brush burning for routine maintenance is not allowed under the rule. Also note the definition of "practical alternative"; some will argue that mulching or landfilling are always practical alternatives and others will argue that these are always too expensive. The further you go into rural Texas, the more this rule is ignored.

(B) in a county that is not part of a designated nonattainment area and that does not contain any part of a municipality that extends into a designated nonattainment area; this provision includes, but is not

limited to, the burning of plant growth generated as a result of right-of-way maintenance, land clearing operations, and maintenance along water canals. Such burning is subject to local ordinances that prohibit burning inside the corporate limits of a city or town and that are consistent with the Texas Clean Air Act, Chapter 382, Subchapter E, Authority of Local Governments, and the requirements of Sec. 111.219(3), (4), (6), and (7) of this title. Commission notification or approval is not required.

Note: Since most of Texas has never had its air quality monitored, the assertion that these counties meet NAAQS is simply that — an assertion. But it's what this policy and rule is based on. The TCEQ maintains good information on NAAQS on its web site, but the best approach to learn about your county is to call the air program at your regional TCEQ office and ask. You'll find TCEQ staff extremely helpful in answering these kinds of questions. There are different reasons that a county can be NAAQS non-attainment, and this will give you the opportunity to meet your contact at the agency. As far as the safety rules are concerned, notice that when burning brush under (A) — in a non-attainment area — you must observe all seven of the safety rules in Sec. 111.219 ("Such burning is subject to the requirements of Sec. 111.219 of this title …"). But if you're burning under (B) in an area with "good air," you only must comply with safety rules 3, 4, 6, and 7 in Sec. 111.219. Just remember: if you want to burn brush and other plant waste on the property where it grew, if you're in a non-attainment area your authorization to burn is restricted. But if you're in an attainment area, you can pretty well burn brush on the property where it grew anywhere in the unincorporated areas. You'd be able to burn brush inside cities too, if local ordinances against open fires didn't prevent you from doing so ("such burning is subject to local ordinances …").

(5) at a site designated for consolidated burning of waste generated from specific residential properties. A designated site must be located outside of a municipality and within a county with a population of less than 50,000.The owner of the designated site or the owner's authorized agent shall:

Note: This is the other major addition when THSC Sec. 382.018 was modified in 2005. With these changes, local governments — or private citizens, companies, or associations — can operate consolidated brush burning sites outside of cities, if the county has a population less than 50,000 (As of the last census date? As of the last date the state estimated the population? No "as of" date for the population figure is given in the law or this rule.)

The material authorized to be burned — plant growth waste as defined in (A) below — must come from specific residential properties. No burning from commercial properties is allowed, although the rule seems to allow for the use of commercial services to haul the brush from a designated residence to the consolidated burn site. Moreover, this subsection makes no reference to mandatory safety rules from Sec. 111.219 being followed. This is probably because (F) below requires a paid firefighter to be present at each burn at the consolidated site, and he or she will impose the appropriate safety rules at the time. Repeating the specifics of the changes to THSC Sec. 382.018, a number of steps must be taken at the consolidated burn site. These are given in (A) through (E) below, including signage and record keeping requirements. Any variation from these specific rules — such as a wrong-sized sign, or brush from an un-listed residence being burned — would constitute a violation of the Texas Outdoor Burning Rule and TWC Sec. 3.177(a)(5). To me, this seems a little picky, but that's the content of the underlying law creating this section.

(A) post at all entrances to the site a placard measuring a minimum of 48 inches in width and 24 inches in height and containing, at a minimum, the words "DESIGNATED BURN SITE - No burning of any material is allowed except for trees, brush, grass, leaves, branch trimmings ,or other plant growth generated from specific residential properties for which this site is designated. All burning must be supervised by a fire department employee. For more information call {PHONE NUMBER OF OWNER OR AUTHORIZED AGENT}." The placard(s) must be clearly visible and legible at all times;

(B) designate specific residential properties for consolidated burning at the designated site;

(C) maintain a record of the designated residential properties. The record must contain the description of a platted subdivision and/or a list of each property address. The description must be made available to commission or local air pollution control agency staff within 48 hours, if requested;

Note: Most cities and counties don't have a "local air pollution control agency."

(D) ensure that all waste burned at the designated site consists of trees, brush, grass, leaves, branch trimmings, or other plant growth;

(E) ensure that all such waste was generated at specific residential properties for which the site is designated; and

(F) ensure that all burning at the designated site is directly supervised by an employee of a fire department who is part of the

fire protection personnel, as defined by Texas Government Code, Sec. 419.021, and is acting in the scope of the person's employment. The fire department employee shall notify the appropriate commission regional office with a telephone or electronic facsimile notice 24 hours in advance of any scheduled supervised burn. The commission shall provide the employee with information on practical alternatives to burning. Commission approval is not required;

Note: Requirement (F) is probably what will limit consolidated burn sites from becoming widespread in Texas. Since these facilities can only be in counties of under 50,000, the primary firefighting generally is done in this size county by volunteers. Texas Government Code Sec. 419.021 reads:

(3) "Fire protection personnel" means:

(A) permanent, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority;

(B) aircraft rescue and fire protection personnel; or

(C) permanent, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

(i) fire suppression;

(ii) fire inspection;

(iii) fire and arson investigation;

(iv) marine fire fighting;

(v) aircraft rescue and fire fighting;

(vi) fire training;

(vii) fire education;

(viii) fire administration; and

(ix) any other position necessarily or customarily related to fire prevention or suppression.

Since the only person who can supervise each burning event at a designated site is a full-time, permanent staff with significant professional credentials, there probably won't be too many properly operated burn sites in the smaller counties.

(6) crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of Sec. 111.219 of this title and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of the intent to burn should be made to the

appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order; and

Note: In some parts of Texas crop residue burning frequently is done in such a way that not all of the safety rules in Sec. 111.219 are followed — burning may happen at night or when atmospheric inversions are present — and "structures containing sensitive receptors" — sometimes entire small neighborhoods or towns — are "negatively affected," a difficult term to define, but probably including situations where asthmatic individuals are sent to the emergency room from smoke inhalation. Sometimes this apparent "rule breaking" is done because of an administrative order, as mentioned in the last sentence. At other times traditional agricultural interests have established long-held patterns of burning that are simply not challenged by state regulators.

(7) brush, trees, and other plant growth causing a detrimental public health and safety condition burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns cannot be conducted at municipal solid waste landfills unless authorized under Sec. 111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of Sec. 111.219 of this title.

Note: Burning every two months by a city to dispose of accumulated brush collected from city streets is fairly common, provided all the safety rules established by Sec. 111.219 are followed. The regional office of the TCEQ will usually require site maps and will probably conduct pre-burn inspections before granting initial authority. Notice that each burn requires separate approval.

Sec. 111.211. Exception for Prescribed Burn
Outdoor burning shall be authorized for:

(1) Prescribed burning for forest, range and wildland/wildlife management purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of Sec.111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.

(2) Coastal salt-marsh management burning conducted in Aransas,

Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

(A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.

(B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.

(C) Such burning shall be subject to the requirements of Sec. 111.219 of this title.

Sec. 111.213. Exception for Hydrocarbon Burning
Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills only upon proper notification as set forth in Sec. 101.6 of this title (relating to Notification Requirements for Major Upset), and if the executive director has determined that the burning is necessary to protect the public welfare. Sampling and monitoring may be required to determine and evaluate environmental impacts.

Sec. 111.215. Executive Director Approval of Otherwise Prohibited Outdoor Burning
If not otherwise authorized by this chapter, outdoor burning may be authorized by written permission from the executive director if there is no practical alternative and if the burning will not cause or contribute to a nuisance, traffic hazard or to a violation of any federal or state primary or secondary ambient air standard. The executive director may specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this rule. Authorization to burn may be revoked by the executive director at anytime if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

Note: This is the general "override" provision under which the TCEQ Executive Director can give permission, in writing, to burn in ways not authorized by this rule. Note that this permission does not extend to a particular TCEQ administrative enforcement officer adding a personal "requirement" that a person follow some safety requirement from Sec.

111.219 not specified in the rule itself.

Sec. 111.219. General Requirements for Allowable Outdoor Burning
Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in any section of this subchapter.

> ***Note: These are the seven "safety rules" that apply to <u>some</u> of the exceptions in the rule. In some cases, <u>none</u> of these apply** — like in training firefighters, where the chief is expected to know how to proceed safely. In others, <u>a few</u> of these apply, but not all — like disposal fires for brush in NAAQS attainment areas or fires for outdoor cooking. In others, <u>all</u> the seven apply — like in the prescribed burns under Sec.111.211. Occasionally you'll encounter someone that asserts that all of these apply to <u>every</u> outside fire — or will want to include his favorite from time to time — but this first sentence of Sec. 111.219 states differently. These safety rules apply to the various exceptions only <u>when specified</u> in any section describing an exception. When you think through the way in which safety rules are applied to various kinds of burning, they make good sense.*

(1) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(2) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

> *Note: See the section in the chapter on illegal burning on how local ordinances must be in conformity with the rules adopted to further the aims of the Texas Clean Air Act.*

(3) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).
(4) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.
(5) Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.

> *Notice the language here. The burning has to be conducted (a) downwind of, <u>or</u> (b) at least 300 feet from <u>structures</u> containing sensitive receptors UNLESS prior written approval is obtained. If you're simply "downwind" you're fine and no permission is required. However, if the wind shifts you may suddenly be in violation. "Adjacent" property*

is not limited to "adjoining" property.

(6) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(7) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

Note: This is a provision often incorrectly cited as applying to <u>all</u> burning every time. While that would possibly be a good idea, the rule simply doesn't support that position. For instance, this subsection of the rule clearly applies to a cooking or warmth fire: burning these items for these purposes is clearly a violation of that section. On the other hand, this rule does not support the notion that one would have to take all wiring out of an old house being used for a firefighter training exercise under Sec. 111.205 before it can be burned. You can have a lively discussion on this point.

Sec. 111.221. Responsibility for Consequences of Outdoor Burning

The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.

Note: This section is why local fire departments should never "give permission" for anybody to burn. Of course, even though <u>all</u> burning is controlled by the state through this rule, permits issued, and orders of the commission, some local fire departments incorrectly continue to issue "permits" to burn. This practice often comes from

attempting to follow the International Fire Code but ignoring its Sec. 307.2.1. When asked for "permission to burn," local fire departments should provide information about the Texas Outdoor Burning Rule and thank the person calling for letting the fire department know when a legal fire (according to the rule, a permit, or an order) is about to take place.

But a local fire department in Texas should never be construed to be giving permission for an open fire. "Giving permission" for burning can only create potential liability for a fire department. Under this section, even if the burning is completely within the law, the person doing the burning retains liability for any related property damage. The last thing a fire chief — or the attorney for the fire department — would ever want to hear is a citizen telling the court, "Well, the fire department gave me permission to do the burning, and it turns out they didn't have the authority. Shouldn't they pay too? They lied me into burning!" More can be done to develop local policies of recovering costs from individuals, companies, and associations that burn in such a manner as to require local firefighters to deal with the results. Sending bills to persons intentionally starting fires — for burning domestic waste in the unincorporated area, for example — for the costs of responding when those intentional fires get out of control should, in our opinion, be standard practice. If a local fire department must use resources to respond to an intentionally set fire that gets out of control, the fire department should be reimbursed its cost of responding.