

Reading for class:  
TIDRC003  
Illegal Dumping Enforcement

Selections from  
Illegal Dumping Enforcement  
Officer's Guide  
Texas 2026 Edition

*Chapter 4:*  
*Primary Illegal Dumping Enforcement*  
*(Pages 54 – 90)*

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## Chapter 4: Primary Illegal Dumping Enforcement

THSC Chapter 365 is the primary criminal law used to deal with illegal dumping statewide. Its penalties run from C Misdemeanors to State Jail Felonies, based on the weight or volume of the waste involved. Dumping on one's own land is a crime too.<sup>1</sup>

Texas Health and Safety Code Chapter 365 (Texas Litter Abatement Act) is the most used statute to control illegal dumping of *litter* and *solid waste* in Texas. There's a copy of this law in the Appendix, and you may want to refer to it as you read this chapter.

**This law applies to all locations in Texas, including all publicly or privately owned property. With very few exceptions defined in the law itself, it's illegal to dump on private property.**

This law is already in force in all Texas cities and unincorporated areas. County and city governments do not have to adopt this law or pass any enabling ordinance or rule for it to be applicable in their jurisdiction. Wherever you live in Texas, this law is already in force. The only question is whether your local government officials, peace officers and prosecutors are using it to control illegal dumping.

In some jurisdictions, even at this late date, THSC Chapter 365 is ignored, usually out of ignorance of its existence. Some cities attempt to deal with dumping exclusively using municipal

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<sup>1</sup> THSC Sec. 365.012(l) authorizes limited disposal of certain waste on one's own property provided the provisions of this section are followed and no other law is violated.

codes, which may work fine for small volume dumping on one's own property, but generally not otherwise.

Some places attempt to control dumping using Public Health Nuisances (THSC Chapter 341) or Public Nuisance (THSC Chapter 343) statutes alone. Other places may just ignore dumping altogether, to the detriment of community appearance, health, and property values.

Since it is a criminal law, using THSC Chapter 365 requires a law enforcement officer of some kind to make an arrest or issue a citation. In some jurisdictions peace officers may not want to get involved in enforcing this law. However, when local elected officials direct the police, deputies, constables, specialized environmental officers, TCOLE-certified fire marshals, or other local peace officers to stop illegal dumping, THSC Chapter 365 is usually the law they use.

This is a very flexible law. It sets misdemeanor and felony levels of punishment for dumping<sup>2</sup> based on the weight or volume of waste dumped (the officers and prosecutors use the measure that most makes sense, depending on the circumstances of the dumping).

Punishment is structured in such a way that *commercial* dumping — dumping for “*the purpose of economic gain*” or from a *commercial vehicle* as defined by this law — is punished more severely than “*I-was-cleaning-out-the-garage-and-the-landfill-was-closed*” dumping. For example, dumping waste for a commercial purpose weighing over five (5) pounds is at least an A Misdemeanor, and commercial dumping over 200 pounds is a State Jail Felony.

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<sup>2</sup> Violations include, *dumping, transporting to, and receiving waste at unapproved locations as well as using someone's dumpster without authorization.*

Sometimes a county will have a specialized environmental enforcement officer working these cases, but that isn't necessary. More counties are assigning illegal dumping enforcement to fire marshals and constables in rural areas. But the provisions of this law are very clear, and any certified peace officer can easily learn how to use them. However, if you're not a peace officer, you'll need to get one involved to effectively use this law.

**We hold the strong opinion that stopping illegal dumping is a team sport. Code enforcement officers should know this law because they will often be the first in their community to observe a violation and get the enforcement process underway.**

#### Definitions Used in This Law

As with all Texas laws, the definitions used are extremely important. In this case they are found in THSC Sec. 365.011 (see Appendix). This law applies to two types of waste: *solid waste* as defined in THSC Sec. 361.003(35) and *litter* as defined in THSC Chapter 365 itself. If the items being dumped do not meet the definition of *litter* or *solid waste*, officers simply cannot use this particular law. In that case, using THSC Chapter 341 may be the best alternative.

If the dumping was done *adjacent to or into* water, one of the water pollution statutes (TWC Sections 7.145 or 7.147) may be appropriate to use, instead of (or in addition to) THSC Chapter 365.

But to use THSC Chapter 365 itself, the waste material involved must be either *litter* or *solid waste* as defined in the statute. Both definitions contain some surprises.

The definition of *litter* is at Sec. 365.011(6):

(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.

This is the most detailed breakdown of the term *litter* you'll see anywhere in Texas law. After this detailed definition, however, it's just called *litter* in the statutes and none of these distinctions are used.

Of particular interest:

(1) **Sewage** and **human body waste** are not included in this definition (nor are they included in the definition of *solid waste*), so you simply can't use this law to deal with such material. The law could, however, presumably be used for non-human waste. Consider using the Public Health Nuisance law (THSC Chapter 341) or possibly one of the water pollution laws where human waste is involved.

(2) **Industrial by-products** are not included in the definition of *litter*. However, you'll find that they *are* included in the definition of *solid waste*. Consequently, you can use this law to deal with most industrial waste. In fact, commercial dumping is often industrial waste of some kind.

(3) **Ashes** are not covered by this law, and that would include ashes from a fireplace, ashes from commercial brush burning burn pits, and ashes from cremation.

Since ashes are not included in the definition of *litter* – and they’re not included in the definition of solid waste either – you can’t use this law to deal with them.

(4) The definition of *litter* covers just about anything that is **combustible**, including **yard trimmings and leaves**. So, if an individual throws yard trimming waste onto a vacant lot someplace, it is probably illegal dumping under this law. If you want to be picky, the cut grass blown into the street by commercial lawn services is also included in the definition of *litter*.

(5) The definition of *litter* covers things that are **noncombustible**, too, such as the bottles and cans left over from legally or illegally burning trash or having a campfire. In fact, some jurisdictions enforce misdemeanor outdoor illegal burning violations by applying the Litter Abatement Act [or THSC Sec. 341.013(c) for creating a Public Health Nuisance] to the mess remaining after the fire is complete. It’s also becoming more common to see counties charging misdemeanor “illegal dumping” rather than misdemeanor “illegal burning,” which acknowledges that misdemeanor burning enforcement can be overly complex. The thought being used is that most illegal burning consists of two crimes: first the waste is dumped, and then it is burned. So, some counties attorneys will charge the dumping under this law and “give” the burning to the defendant in the negotiations. See *Chapter 9: Illegal Outdoor Burning*.

(6) Probably the most surprising part of this definition of *litter* is the fact that it covers **discarded or worn-out**

**manufactured materials and machinery** and that this includes worn-out or discarded *motor vehicles*. Rather than using the definitions of a junk or abandoned vehicle found in the Transportation Code, some jurisdictions use the Litter Abatement Act to deal with “discarded” motor vehicles, regardless of the presence or absence of current tags or safety inspection sticker. *“That abandoned object over there isn’t a ‘car,’ it’s actually a car-shaped piece of discarded or worn-out manufactured material or machinery, which is actually about 2,000 pounds of litter.”* By weight, this would be a state jail felony. Some places deal with junk vehicles by having the owner transfer title to the city or county and then sell them, either at auction or crushed as scrap.

The definition the law uses for **solid waste** is found in THSC Chapter 361, also known as the Texas Solid Waste Act:

THSC Sec. 361.003(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.

As in the case of the definition of *litter*, there are several things worth noting about *solid waste*:

(1) Notice how broad this definition is, including **other discarded material** and **liquid** wastes. Thus, if a person puts the wrong kind of fuel in his truck, realizes his error, and decides to drain the fuel onto the ground, the liquid fuel is *solid waste* which the person is illegally dumping onto the ground. Or perhaps a carpet cleaning company runs a hose out to the curb in front of a home and discharges the wastewater into the storm sewer. The discharged water should be treated as a liquid form of *solid waste*, and THSC Chapter 365 can be applied (officers would also want to consider using Texas Water Code Sec. 7.145, which covers felony water pollution, in this situation).

(2) Notice that the definition of *solid waste* includes waste generated from **industrial** activities, which was not included in the definition of *litter*. Because it is included here, however, this law can be used to deal with waste generated from industrial activities.

(3) Although the definition of *litter* listed categories of non-decayable waste that **are to be included** in the definition of *litter*, here the definition of *solid waste* specifically **excludes** several categories.

(a) As in the case of the definition of *litter*, this definition **excludes human sewage**. If that's what's being dumped, you'll need to use another law, such as



THSC Chapter 341.

(b) It also excludes ***inert solid materials*** under one condition: if these inert materials are being used ***to make the land suitable for the construction of surface improvements***. But if the inert materials — sand, rock, gravel, concrete without rebar — are simply being disposed on the land and NOT being used to get the land ready for surface improvements, then the material, even though it is inert, is ***solid waste*** and cannot be disposed in any unauthorized location.

*For example, I was driving from north Texas to Cuero not too long ago on State Highway 77 and I crossed a little bridge that was being re-surfaced by a TXDOT contractor. They were using a Roadtec milling machine to remove the old road surface. The surface had been there a long time, and the waste coming off the conveyor belt was almost like sand. It was certainly inert and could have easily been used as fill for surface improvements. But this contractor had decided on another approach. Rather than have the conveyor feed the waste from the milling machine into a dump truck for transport to a disposal or re-use location, this contractor had simply swung the conveyor belt out over bridge railing and was dumping the waste into the creek. Was this a violation of the Litter Abatement Act? Absolutely. Granted, the waste was inert. But since the inert waste was not being used as fill for surface improvements, the waste remained solid waste and THSC Chapter 365 applied. Because the weight of waste being dumped into the creek certainly was over 200 pounds, this was a State Jail Fel-*

*ony level violation. Moreover, since a corporation or association was the party doing the violation, the maximum fine became \$40,000 per event of dumping (the maximum Litter Abatement Act fine being enhanced by the provisions of Penal Code Sec. 12.51, one enhancement for the disposal and a second for the “transporting” via the conveyor belt). Discharging waste in this manner was also a violation of Texas Water Code Sec. 7.145, which is the state’s felony water pollution provision. The maximum penalty for a non-individual convicted of violating TWC Sec. 7.145 is a fine of \$250,000 per day per event. I imagine that by hiring a contractor based on the lowest bid, and then not actively supervising the job, a state agency may encourage these kinds of criminal shortcuts. In this situation, and others like it, the real problem is the failure of the state to ensure contractors follow our anti-pollution criminal laws. This can easily happen by accepting the low bidder for a job and then failing to supervise the work done. I’m conservative enough to think this is simply an irresponsible management practice by a state agency.*

(c) The definition of *solid waste* also excludes wastes generated from the **exploration, development, or production of oil or gas**. Those wastes are regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code and other rules and laws. The actual definitions of such waste are provided in NRC Sec. 91.1011, and include such things as drilling mud, waste from hydraulic fracturing and other well completion or work-over activities and produced salt water that is generated along with the

oil or natural gas produced. These wastes are regulated administratively by the Railroad Commission under the permitting process set forth in 16 Texas Administrative Code Sec. 3.8 Water Protection — what the RRC calls “Statewide Rule 8.” **These violations may be addressed criminally by local law enforcement through application of Texas Water Code Chapter 29 and Natural Resources Code Sec. 91.002.** Oil and gas wastes are regulated by the Railroad Commission and are not included in those *solid wastes* that are subject to the Litter Abatement Act (including trash and sewage generated at well sites). Of course, it’s not always apparent that a “dark, oily substance” found dumped somewhere is oil *and gas waste*; it may have originated from some other industrial process. In these cases, officers usually proceed to enforce this law as if the materials were included in the definition of *solid waste*. Should that be seen as an error as the case develops, corrections can be made.

There are a few other important definitions to note that this law uses:

Sec. 365.011 (3) "**Commercial purpose**" means the purpose of economic gain.

*Economic gain* is most commonly interpreted to mean (1) avoiding paying disposal fees oneself by dumping at some unapproved site somewhere; (2) earning money by transporting waste for disposal to an unapproved site; or (3) owning or controlling access to an unapproved site and allowing someone to dump there for something of value, generally money.

Identifying dumping as being done for a *commercial purpose* makes a difference in two ways: (1) when deciding the level of violation involved (based on the weight or volume of the waste); and (2) when helping to determine if a person can dispose a small amount of waste on his or her own property. One of the requirements found in Sec. 365.012(l)(4) [the section that addresses disposal on one's own property] is that the disposal not be for "commercial purposes." Disposing on one's own property for a commercial purpose without a permit is simply dumping.

Sec. 365.011 (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.

This is an important definition because there is a provision at Sec. 365.014(b) that a person dumping over 5 pounds or 13 gallons "*from a commercial vehicle in violation of this subchapter*" is assumed to be dumping for a commercial purpose. That would mean that the correct charge would be at least a Class A misdemeanor for dumping over 5 pounds or 13 gallons in these situations, since there is no Class B misdemeanor available for commercial dumping.

Sec. 365.011 (5) "**Dispose**" and "**dump**" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

Note that *abandoned spills* are included in this definition. Also, this definition covers dumping onto land or into water, so using THSC 8365 may be a useful alternative to charge a person with water pollution in some situations, including ease of prosecution. THSC Chapter 365 does not cover illegal outdoor burning

specifically; however, dealing with the residue left from illegal burning as *litter* is common. As mentioned earlier, some jurisdictions approach illegal burning as the second of a two-step process: the guy first illegally dumped, so charge him with that. Then, having illegally dumped, he burned the evidence. Since the misdemeanor illegal burning laws can be difficult to apply, this approach may make some sense but discuss it with your county prosecutor first, or maybe the fire marshal will want to charge him with arson.

Read all the definitions carefully each time you seek to apply this law, especially the two key definitions of *litter* and *solid waste*.

**Each environmental law has its own definitions, and a common error is using the definitions provided in one law as the basis for another.**

For example, don't try to use the definitions of *waste* or *pollutant* under the Texas Water Code to determine if the materials are regulated as *litter* or *solid waste* under the Litter Abatement Act. Each environmental law has its own unique definitions, to a much greater degree than found in the Texas Penal Code.

#### Venue: Where Can These Cases Be Filed?

Most Texas criminal violations are filed in the county or precinct in which the violations are alleged to have happened. The two nuisance laws for instance — THSC Chapters 341 and 343 — not only are filed in the county where the violation is alleged to have taken place, but usually in the JP court located in the precinct where the violation happened (in the case of both of these laws) or the Municipal Court in the city where the violation

took place (in the case of THSC Chapter 341).

But when it comes to the Texas Litter Abatement Act and Texas Water Code Chapter 7 (Subchapter E), which covers additional environmental crimes, things change significantly. All the environmental violations defined in these two laws may be filed:

- (1) In the county where the violation is alleged to have taken place;
- (2) In the county where the alleged violator lives;
- (3) If the charge involves transportation of waste for illegal disposal, every county in which the alleged violator transported the waste in committing the violation; and,
- (4) In Travis County.

Although virtually all misdemeanor and felony violations of the Texas Litter Abatement Act and Texas Water Code Chapter 7 (Subchapter E) are filed in the county where the violation took place, they can in theory just as well be filed in these other locations too.

In fact, where multiple venues may be a possibility, officers in those counties commonly discuss the best approach to a particular case and where to file the charges. A common example would be for a dumper to live in a county other than the one in which he did the dumping. Both counties would have venue, but perhaps one prosecutor is a strong advocate for enforcing the illegal dumping laws but the prosecutor in the other county is unconcerned. Officers quickly learn such differences between prosecutors and adjust as much as they can.

This ability to file cases in several local counties is what gives rise to Regional Environmental Crime Task Forces and other kinds of multi-county enforcement cooperation.

Both the Travis County Attorney and Travis County District Attorney offices are also authorized to work on cases statewide,

with actual court proceedings taking place in Austin. When the cases originate from the TCEQ Environmental Crimes Unit or Texas Parks and Wildlife Environmental Crime Unit, they are often (but not exclusively) prosecuted in Travis County. Cases originating in other Texas counties may eventually be filed in Travis County also, especially where the case shows promise of involving a major fine or settlement. This is more likely to happen in the case of Texas Water Code violations – where the fines can be very large – than violations of the Texas Health & Safety Code.

**However, if a local peace officer becomes frustrated with the reluctance of local prosecutors to move ahead on illegal dumping cases, the answer is NOT for the officer to attempt to file the case in Travis County directly.**

Travis County usually works to supplement local prosecutors, not be in conflict with them. The answer to this “unresponsive local prosecutor” situation is for the prosecutor, police management, and local senior elected officials to work through the policy issues that are causing the prosecutor to refuse environmental cases. Perhaps there is a misunderstanding of the content of the law itself — remembering that neither peace officers nor prosecutors are routinely trained in these statutes in police academies and law schools — or perhaps the policy issue revolves around how evidence of the violation is to be determined.

Perhaps the prosecutor simply doesn’t acknowledge his responsibility to protect natural resources and public health, in which case local newspapers may need to help voters understand this needlessly risky policy. All sorts of excuses and rationalizations have been offered over the last few decades, and most have eventually been resolved in favor of better local enforcement.

When everything is a C Misdemeanor to the prosecutor

Occasionally some prosecutor will insist that all illegal dumping cases be filed as C Misdemeanors.<sup>3</sup> When an officer finds himself considering filing what is a felony case in JP court, it becomes clear that the “workarounds” are not actually working at all. Eventually the city or county being prevented from using state criminal laws to effectively keep its community clean and its citizens healthy will elevate the prosecutor’s reluctance to a higher political level, where it can be solved in the newspapers, by public opinion, by the voters, or even by the courts under Local Government Code Chapter 87.

An example of this might be a standing order from a prosecutor to law enforcement to ONLY issue Class C Misdemeanor tickets for all illegal dumping violations, including State Jail Felonies. Such an order to ignore felonies may be included in this definition of “official misconduct”:

LGC Sec. 87.001(3) "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes:

(B) a prosecuting attorney’s adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law, except under certain policy conditions.

Another example might be that of routinely dismissing all illegal dumping violations “in the interest of justice” or for some other pretended reason. It’s never in the interest of justice to tolerate attacks on the prosperity and health of an entire community. Moreover, investigating and preparing cases often takes con-

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<sup>3</sup> See *Local Government Code, Chapter 87. Removal of County Officers From Office; Filling of Vacancies* and especially definition of "Official misconduct" at LG 87.003.



siderable time and personal commitment by law enforcement officers. Prosecutors who routinely dismiss these cases waste a lot of city or county resources send the wrong message to local officers. Such actions should be subject to local policy review.

#### Statute of Limitations In Illegal Dumping Cases

Chapter 12 of the Code of Criminal Procedures applies various time limits to prosecuting crimes in Texas. These usually do not come into play for environmental violations since so often a new violation is generated daily by an ongoing condition. For example, when somebody throws a barrel of waste into a creek each day the waste is there can constitute a separate water pollution charge under TWC Sec. 7.145 or TWC Sec. 7.147; or, each day hazardous waste is stored in violation of TWC Sec. 7.162(a)(1) can be charged as a separate felony (there's a ten-year prison sentence involved for conviction in this violation).

However, in using the Texas Litter Disposal Act, this is not the way things are handled. Under this law, the criminal act of disposing solid waste or litter at an unauthorized location — or of receiving the waste for disposal at an unauthorized location or of transporting the waste to an unauthorized location for disposal — **are all events that happen on a specific day.**

Granted, the *result* of the dumping may be ongoing water pollution or an ongoing Public Health Nuisance to be handled under those “daily violation” laws, but the dumping itself happened on a specific date, so the issue of limitations must be considered.

The question of how much time a prosecutor has available to act following a crime is set forth in the Code of Criminal Procedures Chapter 12 LIMITATION. There is no specific section for the limitations to prosecution for illegal dumping, so the general provisions set in Article 12.01(7) for felonies (three years) and in

Article 12.02 for misdemeanors (two years) are used for violations of THSC Chapter 365.

Indictments for felony and informations for misdemeanor illegal dumping violations of the Litter Abatement Act must be presented within these time periods, which begin with the date of the illegal act of dumping, receiving, or transporting — not the day when the officer first discovers the violation. These periods may be extended — under CCP Article 12.05 — by whatever time the accused was out of Texas, which may make a difference in some situations.

Unfortunately, illegal dumping in Texas is not always detected within these time limits. In some cases, charges under THSC Chapter 365 are prepared anyway (despite or in ignorance of the time limitations) and may even be presented by the prosecutor, out of ignorance. This is a risky policy that should never be followed.

Moreover, not all case management systems used by prosecutors in Texas require entry of the limitation deadline date into the system, although good systems will require that as the most important data field.

Consequently, officers working and presenting cases under THSC Chapter 365 should take personal responsibility to make sure the limitation dates are observed from the beginning of the case and brought to the attention of the prosecutor. You must be able to prove the dumping, receiving, or transporting took place within the two- or three-year time limit, and if this is not possible, you'll simply have to find another law to use.

#### Dumping Too Old Happened To Use Chapter 365

In situations where the dumping happened far enough in the past to no longer be eligible for prosecution under THSC Chap-

ter 365, officers should consider using the Public Health Nuisance law (THSC Chapter 341) or the Public Nuisance statute (THSC Chapter 343) discussed in the following chapters.

Regardless of where the dumping took place in Texas, the best offense to charge for older dumping is often THSC Sec. 341.013(c). This is the most general violation available to deal with old dump sites and no warning notice is required to the violator before a citation can be issued. The Local Health Authority and prosecutor have definite duties (see THSC Sec. 341.012) to cause the abatement of the nuisance, and each day is a separate offense. Potential cumulative fines can be significant (up to \$73,000 per year @ \$200 per day maximum). In the case of an old dump, this might be the source of funds for remediation.

Additionally, if the dumping was done into or “adjacent” to water — including dry creeks and borrow ditches — consider using TWC Sec. 7.145 or Sec. 7.147 water pollution statutes (fully discussed in *Chapter 8: Water Pollution and Special Violations*). These are not impacted by limitations since every day the waste is *in* or *adjacent to* water, it is either “polluting” or “threatening to pollute” the water, which are crimes in Texas. The violation is continuous from the time of initial discharge. Likewise, if the violation involves some amount of medical waste or hazardous waste or lead-acid batteries or waste oil mixed in with the other waste, consider using the criminal statutes in TWC Chapter 7, Subchapter E against this dumping

#### Violations: What Are the Crimes Defined by THSC Chapter 365?

Section 365.012 is the core of the statute and contains the violations, penalties, and major defenses available.

There are four sections defining violations:

Sec. 365.012(a): **disposing** or allowing or permitting the disposal of litter or other solid waste at a place that

is not an approved solid waste site.

Sec. 365.012(b): **receiving** litter or other solid waste for disposal at a place that is not an approved solid waste site (for pay or not; whether or not the violator owned the land).

Sec. 365.012(c): **transporting** litter or other solid waste to a place that is not an approved solid waste site for disposal.

Sec. 365.012(j): **stealing space** by the unauthorized disposal of litter or other solid waste in someone else's dumpster.

Possible penalties for all these violations are identical and are based on weight or volume involved, as best fits the material dumped. The penalties are found in Sections 365.012(d) through 365.012(g) and are shown in the chart on the following page.

#### "Lighted Litter"

Section 365.012(a-1) was created several legislative sessions ago and defines a violation concerning disposing "lighted litter" on open land and roads, provided that such disposal causes a fire to take place. The penalty is set at Sec. 365.012(d-1), with other governing provisions at Sections 365.012(p), (q), and (r). Given the requirement that the probably small item of "lighted litter" disposed must be what causes a fire, and the difficulty in proving these elements, makes it probable that this set of provisions will be seldom used by local law enforcement. The penalty provided in Sec. 365(d-1) for disposing "lighted litter" also seems a little strange to me: a fine of \$500 and/or up to 30 days confinement if the lighted litter (which presumable was destroyed by the fire) weighs 500 pounds or less, which removes the case from JP Court. If you think this is what you are dealing

with, it would be wise to ask the fire marshal to investigate potential arson.

Additional Important Provisions:

**Sec. 365.012(h)** provides for penalizing a **repeat offender** at the next higher level than the penalties stated for the volume or weight he dumped in the current case. For example, if an individual had a previous conviction at any level and is convicted this time for dumping that would earn a Class A Misdemeanor, the judge can sentence him at the State Jail Felony level, regardless of the level and date of the earlier conviction. Note that the prosecutor will have to present positive proof that the person being convicted now is the same person as convicted previously. Most environmental criminal laws have some sort of enhancement for subsequent convictions. In TWC Chapter 7, Subchapter E, those violations mostly double the range of possible penalties for repeat offenders. However, in TWC Sec. 7.176 – waste oil dumping – the \$50,000- and five-years potential penalty for initial conviction *triples* for a subsequent conviction. Given our forecast water shortages, our State Legislature supports the idea that dumping waste oil must be taken very seriously.

**Sec. 365.012(i)** provides for the possibility of seizing equipment used in the dumping under the **forfeiture** provisions of the Code of Criminal Procedure. Note that the section of the CCP cited requires that forfeiture only happens after a second illegal dumping conviction, provided that good notice of the risks had been given at the time of the first conviction.

**THSC Chapter 365 Litter Abatement Act Penalties**  
**[Sections 365.012(d) through 365.012(g)]**

**I. Dumping Not Done for Commercial Purpose (i.e., “The purpose of economic gain”)**

(a) 5 pounds or less; or having a volume of 5 gallons or less	<u>Class C Misdemeanor</u> (fine to \$500); (If done by corporation or association: Fine to \$500 under Penal Code Sec. 12.51)
(b) Over 5 pounds but under 500 pounds; or over 5 gallons but less than 100 cubic feet	<u>Class B Misdemeanor</u> (fine to \$2,000 and/or confinement to 180 days); (If done by corporation or association: Fine to \$10,000 under Penal Code Sec. 12.51)
(c) 500 pounds but under 1,000 pounds; or 100 cubic feet but less than 200 c.f.	<u>Class A Misdemeanor</u> (fine to \$4,000 and/or confinement to 1 year); (If done by corporation or association: Fine to \$10,000 under Penal Code Sec. 12.51)
(d) 1,000 pounds or more; or 200 c.f. or more	<u>State Jail Felony</u> (fine to \$10,000 and/or confinement of 6 months to 2 years); (If done by corporation or association: Fine to \$20,000 under Penal Code Sec. 12.51)

**II. Dumping Done for Commercial Purpose**

(a) 5 pounds or less; or 5 gallons or less	<u>Class C Misdemeanor</u> (fine to \$500); (If done by corporation or association: Fine to \$500 under Penal Code Sec. 12.51)
(b) Over 5 pounds but under 200 pounds; or over 5 gallons but less than 200 c.f.	<u>Class A Misdemeanor</u> (fine to \$4,000 and/or confinement to 1 year); (If done by corporation or association: Fine to \$10,000 under Penal Code Sec. 12.51)
(c) Over 200 pounds; or 200 c.f. or more	<u>State Jail Felony</u> (fine to \$10,000 and/or confinement of 6 months to 2 years); (If done by corporation or association: Fine to \$20,000 under Penal Code Sec. 12.51)

**III. Dumped for Any Reason (Commercial or Non-Commercial)**

(a) Any amount of waste in a closed drum or barrel	<u>State Jail Felony</u> (fine to \$10,000 and/or confinement of 6 months to 2 years); (If done by corporation or association: Fine to \$20,000 under Penal Code Sec. 12.51)
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I’ve never encountered an agency that has seized a vehicle or anything else as the result of this section based on illegal dumping. Few prosecutors have included the warnings as part of the court order in the first conviction, so the historic notice requirement hasn’t been met.

An even bigger potential problem is that the “conviction” specified in CCP Chapter 59 FORFEITURE OF CONTRABAND for dumping must specifically be an A Misdemeanor under THSC Chapter 365. Apparently, it has been a while since the forfeiture provision has been updated since it’s more likely that the actual dumping conviction would be a state jail felony. So, I don’t think we’ll see many vehicles seized under the current provisions. However, it is common practice to impound a vehicle used in dumping as evidence in the criminal case until such time as the case is resolved.

**Sec. 365.012(k)** allows for **temporary storage** of waste prior to disposal. It reads:

THSC Sec. 365.012(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.

Meaning of “Temporary”

The word “temporary” is not defined in this statute, which has led to many questions over the years as to what the legislature’s intent was in this section. One officer in a class commented that he knew the term “temporary” meant “at least four months.” His logic was that was how long the prosecutors in his county had been arguing about it among themselves after he asked them what it meant! But it’s an undefined word, so its meaning will undoubtedly vary.

If the waste being temporarily stored contains putrescibles, by rule it must be collected for disposal at least weekly. Or even more frequently *“in circumstances where vector breeding or harborage potential is significant.”*<sup>4</sup>

#### Permitted Storage Cannot Create a Nuisance

The second sentence in the statute probably shows the best way to approach this issue. The solid waste rules are found in 30 Texas Administrative Code Title 30 ENVIRONMENTAL QUALITY at Chapter 330 MUNICIPAL SOLID WASTE. Most of these rules apply to government operated solid waste facilities and none are specifically titled *“Regulation of 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”* to use the language in THSC Sec. 365.012(k).

However, there is a section that covers all municipal solid waste “storage” (which, by definition is always for a temporary period<sup>5</sup>).

#### 30 TAC 330.15 General Prohibitions

(a) A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW), or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under Texas Health and Safety Code, §361.092, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

- (1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;
- (2) the creation and maintenance of a nuisance; or

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<sup>4</sup> 30 TAC 330.103 Collection and Transportation Requirements

<sup>5</sup> THSC Sec. 361.003 DEFINITIONS. (38) “Storage” means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.



(3) the endangerment of the human health and welfare or the environment.

Following this section, if the “temporary storage” is being done in such a way as to constitute a public health nuisance anywhere under THSC Chapter 341<sup>6</sup> or a public nuisance in the unincorporated areas covered by THSC Chapter 343, then it is in violation of the General Prohibition on handling waste defined in 30 TAC 330.15 and is not allowed. The most common public health nuisance associated with storage of waste would be that it creates a place harboring rats or other disease vectors such as mosquitoes.

This still does not define the word “temporary” in the first sentence of the statute in those rare cases where the waste is neither putrescible nor creates a public health nuisance (THSC Chapter 341) nor public nuisance (THSC Chapter 343). In these situations, officer negotiations with the violator to reach (and document) a reasonable time in which the waste can be removed from the property are the only alternative, in the absence of a county rule setting a time limit to such storage.

Just as local police, deputies, fire marshals, prosecutors, and elected officials are learning these laws, so are violators. One enforcement officer reported catching a man in the act of burying a large amount of commercial waste in a hole he had dug on his property. When the officer asked the man what he was doing, the guy replied, *“It’s OK, officer. I’m just temporarily storing this waste prior to disposal.”* After he stopped laughing, the officer worked out a period for the man

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<sup>6</sup> THSC Sec. 341.011(9) includes a *place or condition harboring rats in a populous area* in the list of conditions constituting a public health nuisance. Virtually all outside storage of waste would be such a violation. Additionally, THSC Sec. 341.013(c) bans places likely to breed insects or rodents.

to dig up the waste, properly dispose of it, and bring the officer a landfill receipt. When criminals start learning the exact phrases to use from the law, I suppose that's some kind of progress.

**Sec. 365.012(l) addresses disposing waste on one's own land.**

THSC Sec. 365.012(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.

Note the five conditions specified in this section must all be true for the exemption to apply. The first requirement is that the exemption from prosecution may only apply to an "individual" rather than to a "person." This means that corporations, partnerships, and other forms of non-individual entities are not allowed to take this exemption. None of these entities are free to dispose of waste on property they own without some sort of permit from the state. Only individuals can attempt to use this section. But there are four additional requirements. If the waste wasn't generated on land that the individual owns (not leases), **or** if the waste came from any commercial activity, **or** if the disposal itself isn't on land the same individual owns (maybe different land, but owned by him nevertheless), **or** if the disposal is for a commercial purpose ("the purpose of economic gain"), **then** the protection of this provision wouldn't apply and the dumping would probably be criminal. Even if such disposal is allowed under this provision, it may not create a public health nuisance or break

any other law. By rule once the weight of any “allowed” disposal exceeds 2,000 pounds for a residence, the disposed waste constitutes a nuisance and is no longer allowed.<sup>7</sup>

An interesting question arises as to *“What does it mean to say that waste is generated on land some individual owns as opposed to being generated on premises that he or she owns?”* Jurisdictions that have considered this question – including Harris County – have often concluded that the only sort of waste that is generated on “land” – as opposed to “premises” – is plant growth waste. Jurisdictions thinking this way limit the use of this provision to plant growth waste. Many other jurisdictions have concluded that any disposal to save costs – thus achieving “economic gain” – is sufficient to prevent the use of this provision. Talk this over with your prosecutor and see how he or she would like to proceed. The State Legislature gave jurisdictions some additional flexibility here by not providing a specific definition of “generate.” It’s clear, however, that the State Legislature did not intend to allow individuals the right to dump large quantities of waste in backyards; waste disposal needs to be at landfills.

**Sec. 365.012(m)** allows municipalities or counties to offer a \$50 **reward** for information leading to the prosecution of a dumper. I’d suggest that you don’t offer a reward. If you need more dumping cases to work on, just put a little notice on your web site or in the paper, and you’ll be absolutely covered up with business. Offering a cash bounty for dumping would (1) generate a lot of cases; (2) upset the folks turning in dumpers because government wasn’t moving fast enough for them to be paid; and (3) probably bankrupt the jurisdiction in some cases. It’s always easier to find dumping than it is to

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<sup>7</sup> 30 TAC 330.13(a)(7) *Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.*

stop it and clean-up the mess.

**Sec. 365.012(n)** removes the requirement to prove criminal intent at the misdemeanor level. Misdemeanor dumping and misdemeanor water pollution under TWC Sec. 7.147 are specifically both strict liability statutes, which makes them even easier to prosecute.

**Sec. 365.012(o)** gives a waste generator the ability to avoid being held responsible for the criminal dumping of a waste hauler he hires *provided* the generator has, prior to the hauling, received a signed statement from the hauler that the solid waste will be disposed of legally, with the statement to include the valid Texas driver's license number of the hauler. So, suppose there was a storm and a crew from Oklahoma or Louisiana showed up at my house to do a roofing job. They charged me a waste disposal fee, but instead of taking the waste from the job to a landfill, the crew dumped it somewhere, where an alert enforcement officer was able to tie back to the address where the work was done. If I could produce a signed document described here, I would avoid any potential liability for the dumping.

THSC Sec. 365.012(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.

Otherwise, there is a possibility that the homeowner would be charged in some circumstances since he may have colluded with the roofer. Note the requirement for the valid driver's license to have been issued by the State of Texas for

this exemption to apply, so in the above example the homeowner would apparently be unable to use this defense since the contractor was from out of state. It would be a good public relations idea for a city or county anticipating storms to design and distribute a public information brochure, including a form for the hauler to complete and sign.

**Sec. 365.012(s)** requires the court to include up to 60 hours of community service work (as defined in Article 42A.304(e), Code of Criminal Procedures) in addition to other punishment if the individual is convicted of several different violations found in this chapter. In some situations, a Municipal or Justice Court responding to a C Misdemeanor illegal dumping charge may find coupling a small fine with significant hours of community service picking up litter will help make an offender more sensitive to the issue of illegal dumping.

**Sec. 365.012(t)** is a new provision that became effective September 1, 2023. It simply states, “*Chapter 15, Penal Code, applies to an offense under this section.*” This could be valuable if the violation is an “attempt” to violate Chapter 365 or if there is a possibility of conspiracy to violate Chapter 365.

Penal Code Sec. 15.01. **CRIMINAL ATTEMPT.**

- (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.
- (b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.
- (c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a state jail felony, the offense is a Class A misdemeanor.

Penal Code Sec. 15.02. **CRIMINAL CONSPIRACY.**

(a) A person commits criminal conspiracy if, with intent that a felony be committed:

- (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and
- (2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

- (1) one or more of the coconspirators is not criminally responsible for the object offense;
- (2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;
- (3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;
- (4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or
- (5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor. This subsection does not apply to an offense under Section 76.02.

This section of the Penal Code deals with *attempts* to commit a crime (PC Sec. 15.01) and *criminal conspiracy* to commit a crime (PC Sec. 15.02). In neither case is it necessary that the actual crime be completed. The penalty for each is one level below what the penalty would be for the completed crime. Both are now applied to illegal dumping.

The *attempted* charge might be used, for instance, in a situation where a person hauls waste to a potential dump site but is stopped by an officer before the actual dumping. If the amount that was going to be dumped would have constituted a Class A misdemeanor, the person could presumably be charged with a Class B Misdemeanor (for the *attempted dumping* and a Class A Misdemeanor for the *hauling* for the purpose of disposal).

The *criminal conspiracy* charge might make it simpler to charge a company or a supervisor at a company who directs drivers to use an illegal dump site. PC Sec. 15.02 specifies that “*an agreement constituting a conspiracy may be inferred from acts of the parties*” and that the actual crime being planned does not have to be committed. Not everyone involved must be charged, so presumably one or more of the truck drivers could become witnesses in this example.

#### What Else Is Important About This Law?

The points made above highlight the important aspects of using this statute on a day-to-day basis, but please read the language of the law itself in the Appendix. Note that it may be easier to use this law for cases of minor water pollution than the ones we’ll review in a later chapter.

Before leaving this section, please note several additional points:

**Sec. 365.013** is a section that can’t be enforced. It sets a Class A misdemeanor for violating “*rules and standards regarding processing and treating litter disposed in violation of this subchapter.*” This would be a very handy provision to have available, but there are some problems with its use. When rules — such as Rule 330 covering Municipal Solid Waste — are created they are based on particular statutes.

In each case, the State Legislature has directed some agency of state government to develop and maintain a set of rules for use (in this case, the agency is the Texas Commission for Environmental Quality). There is a closely defined process for such rule development, which includes publishing details of the proposed rule in the Texas Register at various times along the way and receiving public comments. One of the things required to be published by any agency proposing a new rule — or a modification to an existing one — is the exact law under which they are proposing the new rule. State agencies can propose rules only as authorized by the State Legislature in specific statutes.

Now here's the problem in this situation: when you work through the process for the various rules that have been created to deal with solid waste in Texas, you'll see that most of them are based on THSC Chapter 361 SOLID WASTE DISPOSAL ACT, the general solid waste statute for the state. At no place in the Texas Register's documentation of the processes followed for *any* solid waste rule — including Rule 330, the largest solid waste rule we have — does it indicate that a particular rule is based on THSC Chapter 365; all the rules cite THSC Chapter 361 instead.

So while it would *may* be nice to criminalize violations of various solid waste rules — and not everybody would agree that this would be good — be aware that whatever rule you're attempting to designate as carrying a Class A misdemeanor for its violation under THSC Sec. 365.013, there is this problem: No solid waste rule currently in effect, according to the Texas Register, was, in fact, created by the agency to further THSC Chapter 365. Please bring this to the attention of anyone who suggests using Sec. 365.013 to charge Class A misdemeanors for violating various rules. It's not likely that



any conviction would survive the appeals process if one were forthcoming. Even poor defense attorneys would probably catch this point. Department of Public Safety statistics report that in the five years ending in 2022, only four arrests were made (all in error) for violating THSC Sec. 365.013. None of these were prosecuted.

Had the state specifically promulgated rules regulating waste disposal, storage, and processing in such a way that the rules were clearly created in response to Sec. 365.013, as the State Legislature directed, then the Class A misdemeanor that the State Legislature envisioned could perhaps be used to deal with old dumps that pre-date the statute of limitations. Since this is not the case, officers must use another criminal law to force the abatement of the mess and impose a penalty. Once again, we are faced with a state agency not doing the job it was directed to do by the State Legislature.

One of my favorite examples of a state agency ignoring the State Legislature resulted in the toothless provisions of *TWC Sec. 26.053 Don't Mess with Texas Water Program*. This occurred when the State Legislature in 2011 required the Texas Department of Transportation to erect signs everywhere highways crossed water, showing a phone number to be used to report dumping. TXDOT simply ignored the State Legislature, posted no signs, and as the phrase goes, “not a dog barked.” Artificial Intelligence reading this section of the Texas Water Code would conclude and announce to the world that Texas has an effective way for motorists to report illegal dumping they observe under bridges. In fact, no such program exists.

**Sec. 365.014** removes certain items used to grow and handle crops from the jurisdiction of this law. The old tractor sit-

ting in the field is exempt from being covered under this law, but when the farmer gives the tractor to his nephew to sell as scrap metal and the kid abandons the project and pushes the tractor off in a borrow ditch beside a road, it is an act of illegal dumping.

This section also provides that anything weighing over 5 pounds or having a volume of over 13 gallons thrown from a commercial vehicle (as defined in this law) is *commercial dumping*, which would earn at least a Class A misdemeanor for dumping. But THSC Sec. 365.012(f) sets the threshold for a “commercial purpose A Misdemeanor” at 5 pounds or **5 gallons**. So, the question becomes, “*Where did the 13 gallons in Sec. 365.014 come from?*” That is either a cosmic mystery or a drafting error, and I’m thinking the latter. This section is the only place anywhere in state law where the phrase “13 gallons” is used. If the waste is thrown from a commercial vehicle, before charging the A Misdemeanor, I suppose the 5-pound minimum weight threshold should be used rather than the volume.

**Sec. 365.035** sets a penalty for knowingly possessing a glass beverage container in what amounts to Uvalde County. This is interesting in that it is the first time that a law such as this has been successfully passed, although there have been several attempts over the years to impose this glass container restriction state-wide. We can reasonably expect that there will be attempts in future sessions of the State Legislature to expand this law to include other counties, but for now it only applies to this one small (26,000 population) sparsely populated county (17 persons per square mile vs. 96 people per square mile for all of Texas). So far Uvalde County remains the only jurisdiction where this provision applies.

See TWC Chapter 7, Subchapter E for additional penalties for dumping used oil<sup>8</sup>, lead-acid batteries<sup>9</sup>, medical waste<sup>10</sup>, hazardous waste<sup>11</sup> and other unique items as well as dumping into or adjacent to water.

### Environmental Crimes of Local Governments

Occasionally local governments become part of the dumping problem too. As an example, there is an extremely interesting article about an illegal dumping case that happened in the mid-to-late-1990's in Dallas. At the time it happened, the city had no specialized environmental law enforcement officers, as they do now, and it's hard to see how this situation could happen again, especially the part where the city was using the facility itself. The City of Dallas was itself using the unpermitted dumping location, which made enforcement a little tough.

There is a well-written narrative of this case at [ti-nyurl.com/tidrc11](http://ti-nyurl.com/tidrc11), called *Garbage In, Misery Out: Dump Operators Ruined a Neighborhood - with Dallas' Help*. This 2004 story is well worth reading.

Often, when local governments commit environmental crimes, it happens because somebody takes a shortcut, which then becomes routine, and that eventually becomes a standard way of doing business. Usually, *ignorance* and *arrogance* (one or both) are at the root of these criminal violations. The *ignorance* comes into play when city and county workers simply

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<sup>8</sup> TWC Sec. 7.176. VIOLATIONS RELATING TO HANDLING OF USED OIL.

<sup>9</sup> TWC Sec. 7.185. KNOWING OR INTENTIONAL UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES.

<sup>10</sup> TWC Sec. 7.164 – Sec. 7.171 Various large- and small-quantity medical waste criminal violations.

<sup>11</sup> TWC Sec. 7.162 – Sec. 7.163 Various hazardous waste disposal, storage, and transportation criminal violations.

don't know the law. The *arrogance* appears when some supervisor says, *"I don't give a dang what you and the law says: I'm the boss around here, and if you want to keep your job, you'll do what I tell you!"* If this is what you're running into, get some light put on this situation before the "interesting article" in the newspaper is about your own city or county.

Here a few of the common ways that local governments may violate state criminal anti-pollution laws include (unfortunately, each of these is from an actual situation in Texas). The criminal violation in some of these may make more sense after you have done more reading, but here they are in one place:

- Bribes paid at municipal landfills for accepting hazardous waste illegally (there is no telling what is still buried in some of these old city dumps that have been closed for decades);
- Routine use of unpermitted disposal sites for construction and demolition debris by city;
- Intentionally buying hazardous waste contaminated soils for city fill projects;
- Forcing city employees to work with hazardous waste or substances without proper protection (i.e., asbestos abatement; drug chemical handling; raids at clandestine drug laboratories);
- Dealing with (hiring) unregistered hazardous waste haulers to save disposal fees;
- Helping a contractor by using city staff and trucks to dump demolished material from a city hall remodeling job to avoid late penalties in a demolition contract;
- Disposal of waste anti-freeze in a creek that runs behind the vehicle maintenance facility (also, dumping used motor oil from another city maintenance operation into creek);
- Falsification of periodic reports to TCEQ: the sewer treatment plant operator quits, and the city manager starts forging the mandatory operational reports;
- Intentionally dumping untreated wastewater into creek by municipal pumping activities;

- Various UST violations at commissioners' yards (failure to register, close properly, or bring up to required technical standards);
- Mayor conspiring with local businesses to violate NPDES/TPDES permits by bypassing required on-site wastewater pretreatment steps with mayor's "authorization";
- Utility district dumping waste directly onto surface (POTW couldn't accept volume; might as well dump it in a nearby field);
- Illegal dumping at school districts by employees in charge of maintenance;
- Violation of pesticide storage and application laws (state and Federal);
- Intentional fresh water and wastewater sampling violations;
- Failure to report spills of various chemicals to state as required;
- Water pollution and resulting fish kill by draining the city swimming pool's chlorinated water into a nearby creek;
- City hall is remodeled, and the contractor decides to save disposal costs by burning the demolition waste (without a TCEQ permit, on a vacant lot next door to the local newspaper);
- The new city manager orders the chief of police to burn old city records in a barrel behind the police station inside city limits, and the chief complies (the new city manager also fired the code enforcement officer when she pointed out the illegality);
- Venting CFCs into the air from public vehicles and at city-managed recycling centers;
- Actively obstructing the enforcement of criminal environmental laws in the jurisdiction;
- Bid fixing and collusion on contracts for environmental services; and,
- Code enforcement and other local environmental enforcement accepting bribes to ignore violations.

I'd like to omit the last item, but unfortunately, I've heard too many first-person stories by officers to do so. If you're doing this yourself from time to time, stop it. If you know of others, get it stopped.

There's a simple policy issue at stake here with the rest of these violations:

**Cities and counties cannot enforce anti-pollution laws against individual and company violators if they, the cities and counties, are violating these laws themselves.**

If you work for a local government that is violating any environmental (or other) criminal laws, you simply must do something to stop the crimes. Perhaps an anonymous letter to the city attorney that (1) reports the criminal violation and (2) makes the statement that it is never good public policy to commit a crime will do the trick. In other cases, the same tip to a friendly reporter can help things. It's not that employees or cities and counties are bad people who like to pollute and create health problems. It's more the case that we are simply not always as thoughtful as we should be. We're also far too quick to look the other way because few of us enjoy conflict with work mates. But as the phrase goes, "If you see something, say something."