Reading for class:
TIDRC007
Public Health Nuisance Enforcement

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

Chapter 6:
Public HEALTH Nuisance Enforcement
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Chapter 6: Public HEALTH Nuisance Enforcement

THSC Chapter 341 is the easiest law to use to address the Public HEALTH Nuisances frequently caused by illegal dumping. If the dumping creates a place where mosquitoes can breed or rats can live, it's probably a Public HEALTH Nuisance.[1] This law is in force now in every city and county in Texas.

In this chapter we'll refer to C341 and C343 as "C341" and "C343." Also, the terms "public nuisance" and "public health nuisance" are shown as "Public Nuisance" and "Public HEALTH Nuisance" to emphasize the importance of the difference.

This is the most flexible law to use to control the long-lasting effects of illegal dumping. A jurisdiction may be prevented from using THSC Chapter 365 because of the age of the dumping[2], but if the waste is creating a breeding place for mosquitoes or rats, C341 can be used.

Illegal dumping, a crime, almost always creates a Public HEALTH Nuisance, a second crime. Every day the Public HEALTH Nuisance exists is a separate criminal violation.

Enforcing Public Health Law is Important

Public HEALTH Nuisances are usually great breeding grounds for mosquitoes, rats, and other disease-carrying vectors. Such diseases as West Nile Virus, Zika, Dengue Fever, Malaria, Encephalitis, and Yellow Fever can be transmitted to humans by common backyard mosquitoes. Texas is "Ground

[1] THSC Sec. 341.011 and Sec. 341.013(c).
[2] THSC Chapter 365 is subject to time Limitations discussed in Chapter 4.

Zero" for many of these diseases, as are several Mexican *frontera* states just across our southern border. The Texas legislature has given local governments a great deal of power and autonomy to act to protect the health of their citizens, which certainly includes enforcing these existing Public HEALTH Nuisance criminal laws.

The State Legislature's guiding policy statement concerning public health is found at Section 121.003 of THSC Chapter 121 (Local Public Health Reorganization Act). That entire section is worth reading:

> Sec. 121.003. POWERS OF MUNICIPALITIES AND COUNTIES. (a) The governing body of a municipality or the commissioners' court of a county may enforce any law that is reasonably necessary to protect the public health.
>
> (b) The governing bodies of municipalities and the commissioners' courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).
>
> (c) **The commissioners' court of a county may grant authority under this subsection to a county employee who is trained by a health authority appointed by the county under Section 121.021, by a local health department established under Section 121.031, or by a public health district established under Section 121.041 and who is not a peace officer. The court may grant to the employee the power to issue a citation in an unincorporated area of the county to enforce any law or order of the commissioners' court that is reasonably necessary to protect the public health.** A citation issued under this subsection must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court. If a person who receives a citation under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

Cities and counties can use their THSC Chapter 121 powers to establish local health *departments*. But with or without establishing a formal health department, local governments may appoint local a Local Health *Authority* – a physician who is responsible for protecting the public health in the city or county and who serves as liaison on health issues affecting the community with outside agencies. Not too many cities and counties have acted to create health *departments*: only around 150 formally organized full-service local health departments currently exist in the state. But most counties, and some cities and districts, have acted under THSC Chapter 121 to appoint a local physician as the Local Health Authority. Of recent memory, these were often the physicians who were so active during the COVID-19 pandemic.

One way to distinguish between a *health department* and a *health authority* is that a *health authority* is an individual physician, and a *health department* is a formal administrative structure that some cities and counties have created to support that physician.

Among their duties, Local Health Authorities have responsibilities in enforcing THSC Section 341.012, which deals with abatement of Public HEALTH Nuisances. Unfortunately, this is a widely overlooked section of state law. For many reasons – from ignorance to limited human resources – few Local Health Authorities follow its provisions as mandated by the State Legislature. If a formally organized local health department is not using this provision to force abatement of Public HEALTH Nuisances, why not … and can this situation be changed?

In dealing with Public HEALTH Nuisances there are two jobs: (1) imposing a punishment on the responsible party for having or creating the nuisance and (2) eliminating the nuisance itself through abatement … getting the waste to the right place.

Local law enforcement can issue citations and cause suspected polluters to appear before a judge for possible fines. This may be *indirectly* helpful in getting a nuisance abated (*indirectly*, because the judge's power to assess a criminal penalty under THSC Sec. 341.091 does not include ordering an abatement).

Only a Local Health Authority [acting through a Local Health Department or through a trained county employee as provided for in THSC Sec. 121.003(c)] can direct the abatement of a Public HEALTH Nuisance under THSC Section 341.012. The basic concepts concerning a Local Health Authority are in these several sections of the THSC:

> Sec. 121.021. HEALTH AUTHORITY. A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.
>
> Sec. 121.028. APPOINTMENT OF HEALTH AUTHORITY.
> (a) The governing body of a municipality or the commissioners' court of a county that has not established a local health department or a public health district **may appoint a physician as health authority** to administer state and local laws relating to public health in the municipality's or county's jurisdiction.
>
> Sec. 121.031. ESTABLISHMENT. The governing body of a municipality or the commissioners' court of a county may establish a local health department by majority vote.
>
> Sec. 121.032. POWERS AND DUTIES. A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform.
>
> Sec. 121.033. DEPARTMENT DIRECTOR.
> (a) The governing body of a municipality or the commissioners' court of a county shall appoint the director of the municipality's or county's local health department.
>
> Sec. 121.033. DEPARTMENT DIRECTOR.
> (b) The director is the chief administrative officer of the local health department, and **if the director is a physician, the director is the health authority** in the local health department's jurisdiction.

> Sec. 121.033. DEPARTMENT DIRECTOR.
> (d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners' court, as appropriate, and the board.

Thus, following THSC Chapter 121, a city or county can create a *health department*, and that *health department* will have a physician involved as the Local Health Authority. If a city or county decides not to create a formal health department, it may still appoint a physician as the Local Health Authority, and that physician can train a county employee to serve as his or her field agent in the unincorporated areas [see Sec. 121.003(c)]. Appointing a Local Health Authority is optional, but why wouldn't a local government appoint one, unless it can't find a local physician willing to do the extra job?

Since Local Emergency Planning Annex H (Health and Medical Services) includes a role for the Local Health Authority, virtually all emergency planning entities have identified the physician who performs this function. If you are having trouble locating your Local Health Authority, the Emergency Management Coordinator for your city or county can probably help you.

If a person possessing a place with a Public HEALTH Nuisance would simply clean it up when he became aware of its existence [as required under THSC Sec. 341.012(a)], then the Local Health Authority and local prosecutor wouldn't need to follow THSC Sec. 341.012 (b) – (d) to force the violator to abate the nuisance.

However, many Texans apparently don't believe in germs, and having Public HEALTH Nuisances out back where the kids play is just fine with them. They think nothing of their own health, that of their children or their neighbors, and easily tolerate the presence of some disease-supporting mess on their property.

Perhaps they don't yet understand that one's health is related to the cleanliness of one's surroundings. Or perhaps they haven't yet learned that rats and insects carry bacteria and viruses. Or maybe they are attempting to make the point that *"I can do anything I want to do on my own property"* – which has never been true in any civilization, including ours.

Anyway, it's beyond silly use the *"It's my property!"* argument to justify maintaining a condition that is a *"possible and probable medium of disease transmission to or between humans,"* as one of the Public HEALTH Nuisance provisions prohibits.[3]

If a man is maintaining a Public HEALTH Nuisance on a place he possesses and won't clean it up as soon as he learns of its presence, the Local Health Authority is directed to use the process set by the State Legislature under THSC Sec. 341.012 to help the violator see the error of his ways and get the nuisance abated. Not jokingly, we say that a man is already on thin ice at this point because he has probably ignored instructions from his wife to clean up the mess in the backyard.[4] If he remains uncooperative when the Local Health Authority shows up, that process could result in the violator standing before a judge, finding himself under a court order to clean up his mess.

THSC Chapter 341 Minimum Standards of Sanitation and Health Protection Measures

This is the primary state law that prohibits the creation and/or maintenance of Public HEALTH Nuisances anywhere in the state. Before we begin, there are a few points to make about the section of this law that is in the Appendix.

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[3] THSC Sec. 341.011(12).
[4] THSC Sec. 341.012(a) directs a person to abate a Public HEALTH Nuisance on property he possesses as soon as he becomes aware of the situation.

Chapter 341 is a long law, sixty-six pages in the format produced by the State Legislature. It deals with a wide range of health-related topics. In addition to defining and prohibiting Public HEALTH Nuisances, which is our interest, this law also covers topics such as Sanitary Standards of Drinking Water; Protection of Public Water Supplies and Bodies of Water; Standards for Graywater and Alternative Onsite Water; and Sanitation and Safety of Facilities Used by Public.

Since we're focusing on Public HEALTH Nuisances, the copy of the law in the Appendix has all the details on that subject. However, in the Appendix we've also shown the section number and title for topics we're not discussing fully here, such as Sanitary Standards of Drinking Water. If one of the other topics in C341 interests you, we encourage you to access the full law online.

The primary sections of Chapter 341 we'll focus on are those concerning Public HEALTH Nuisances:

Section 341.011 Nuisance;
Section 341.012 Abatement of Nuisance;
Section 341.013 Garbage, Refuse, and Other Waste;
Section 341.014 Disposal of Human Excreta;
Section 341.019 Mosquito Control on Uninhabited Residential Property; and,
Section 341.091 Criminal Penalty.

Think of the sixty-six pages of this law like it's a sandwich. We're interested in the two pieces of bread, but not in what's in the middle. One piece is the first five of the sections above; the other piece is the criminal penalty shown in Section 341.091.

The sandwich filling in the middle also has a criminal violation provision at Section 341.047 that addresses violations pertaining to drinking water, but this does not interest us for the

purpose of this book. So don't get confused: the criminal penalties for having a Public HEALTH Nuisance are only what's described in 341.091.

There are three things blocking local law enforcement from using C341. All of these are easily overcome:

(1) Not knowing the law's content;

(2) The persistently wrong idea that local police don't enforce the Health and Safety Code (of course they do; that's where all the anti-drug laws are located[5]); and,

(3) Fear of getting things wrong and looking dumb (which they won't with a little reading and doing a few cases).

There was one valuable change to this law by the 84th Legislature several years ago: the kind of mosquito that is defined in Sec. 341.011(7) became less specific. The law as amended now reads:

> Sec. 341.011(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;

Note that there are around eighty-five species of mosquitoes in Texas, and only a few transmit diseases. Unfortunately, this small group includes several of the more commonly encountered species. If you plan on using this provision in unincorporated ar-

[5] THSC Chap. 481. TEXAS CONTROLLED SUBSTANCES ACT; Chap. 482. SIMULATED CONTROLLED SUBSTANCES; Chap 483. DANGEROUS DRUGS; Chap. 484. ABUSABLE SYNTHETIC SUBSTANCES; Chap. 485. ABUSABLE VOLATILE CHEMICALS.

eas, you may want to discuss your mosquito control project with a health professional.[6]

Section 341.011(7) thus covers two locations: (1) inside a municipality and (2) everywhere else in Texas (both inside and outside a municipality). Until this change, the sort of mosquitoes in (2) was limited to *Culex quinquefasciatus* mosquitoes (commonly known as the southern house mosquito). Now any kind of disease-carrying mosquito will do, and the section now reads as shown above.

Note that this anti-mosquito nuisance excludes a *location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur.* That section of TWC Chapter 11 WATER RIGHTS reads:

> (12) "Agriculture" means any of the following activities:
> (A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers.

Water involved in agriculture as defined here can be the breeding as many mosquitoes as they like without that water coming under the definition of a Public HEALTH Nuisance provided at Section 341.011(7).

Dumped *solid waste* or *litter* frequently creates a condition that can trap water and thus be a breeding place for mosquitoes.

[6]Also, for all unincorporated areas except agricultural land, consider using THSC Sec. 343.011(c)(3) which prohibits *maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests*. No particular species of mosquito is specified in this law.

Section 341.011 Nuisance

The initial section of interest is Sec. 341.011, which defines twelve common Public HEALTH Nuisances that this law specifically prohibits. Notice, for instance, nuisance (3) in Sec. 341.011 below. This is the provision used by health departments as the statutory basis for inspecting restaurants and other places where food is prepared and sold.

Since these twelve situations are prohibited as criminal violations, any certified law enforcement officer can enforce them in his or her jurisdiction. However, note that while some of the twelve violations can be immediately determined by a law enforcement officer, others may require some technical assistance from the Local Health Authority.

Consequently, some of these provisions are better used by local law enforcement to focus on the health impact of the waste dumped than others.

Also, notice nuisance (12), which is the catch-all. You could cite this violation to deal with the effects of dumped materials, but there's an even better way described below at Sec. 341.013(c).

Here are the twelve Public HEALTH Nuisances:

THSC 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.

As mentioned above, when law or public health enforcement finds one of these situations, there are two things to be done: (1) the violator needs to be cited to get him in front of a judge for punishment for being responsible for having or creating the Public HEALTH Nuisance; and (2) the Public HEALTH Nuisance needs to be abated. The first will typically be heard in a Munici-

pal or Justice Court. The second, if a court becomes involved, will most likely be a Constitutional or Statutory County Court.

Abatement of a Public HEALTH Nuisance

> 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.

If a person possesses a property having a Public HEALTH Nuisance, he or she is supposed to abate that nuisance as soon as he or she becomes aware of its existence. This is the basic policy of the State of Texas. This is expressed in (a) of this section above. Note that the responsible person is the one who “possesses” a location with a Public HEALTH Nuisance. This could include the owner, tenant, adverse possessor (why not?), trust, or ither entity or person controlling the property.

Paragraphs (b) through (d) describe the steps for a Local Health Authority to force the property possessor to deal with the Public HEALTH Nuisance in those cases where the possessor has not already acted. Note that (b) through (d) are only *partially* done by most local health departments. Often these provisions are generally ignored altogether by cities and counties not included in the jurisdiction of a local health department.

"Knowing that the nuisance exists" in (a) does not have to be the result of the city or county providing formal notice. The legislature takes the position that the *possessor* of property should take the lead in keeping that property clean.

When we discuss the Public Nuisance violation in C343 in the next chapter, you'll see that the "notice" in that law must come from the county, which is a more formal process, if not always as effective. But in dealing with Public HEALTH Nuisances, any source of knowledge is sufficient.

The Five "Shalls" of Nuisance Abatement

Notice the mandatory language used by the State Legislature in establishing these procedures in Sec. 341.012:

(1) A person possessing a place with a health nuisance **shall abate** the nuisance as soon as he or she discovers it exists – not only when eventually ordered to do so by the government;

(2) But when the Local Health Authority becomes aware of the presence of a nuisance, the health authority **shall notify** any person responsible for the Public HEALTH Nuisances in writing of the existence of the health nuisance on the property and set a period to abate the nuisance;[7]

[7] Note that the scope of responsibility spreads when passing from THSC Sec. 341.012(a) to Sec. 341.012(b) as described.

(3) The Local Health Authority **shall at the same time send a copy** of the notice to the jurisdiction's prosecuting attorney;

(4) If the health nuisance is not abated within the period specified, the Local Health Authority **shall notify the prosecuting attorney** who had received notice; and,

(5) The prosecuting attorney **shall take the offender to court and seek a court order** forcing abatement.

Local governments usually ignore the provisions mandated by the State Legislature to abate Public HEALTH Nuisances. That's why we have so many of them in all parts of Texas.

Section 341.012 (b) – (d) is a sound abatement procedure, but I've never been able to find a Local Health Authority in Texas that follows it as written. I've found a few who *claim* to follow these provisions, but so far, their assertions don't hold up under close questioning.

What normally happens is that the health authority officer will respond to the presence of a Public HEALTH Nuisance by notifying the property possessor of the violation and setting a time for the nuisance to be abated.

Note that in Sec. 341.012(a) the ***possessor*** of the property is responsible for the abatement without the intervention of the Local Health Authority. BUT, when the representative of the Local Health Authority comes to deliver the Notice to Abate in Sec. 341.012(b), the subject of that notice has now become ***any person responsible for the nuisance,*** not simply the possessor. That could be a neighbor, a company who is using a piece of property as a dumping area, or someone other than the possessor.

Sometimes municipal code officers are limited by unfortunate language of their codes to working only with the "owner" of a problem property, who cannot always be easily found. But if law enforcement uses C341 that problem is eliminated. This law allows focuses on the "possessor" or even "the person responsible" under C341. Since code enforcement officers cannot directly use C341, this wider definition of the responsible party is one more reason to get local police involved.

But things usually immediately go off-track in following the mandatory abatement statutes because the prosecutor is left out of the process.

Usually, no notice will be given by the Local Health Authority to the prosecutor at all, even though that is a mandatory step in the process at Sec. 341.012(b). By failing to notify the prosecutor – even though the statute seems to give a Local Health Authority a lot of room to work out how this notice will flow to local prosecutors – the health authority begins to follow its own ideas and to ignore state law.

But no harm is done, one might argue, if the person with responsibility for the health nuisance simply abates the problem property as directed to do by the notice. Not all things work that smoothly, however; not all property possessors are immediately compliant.

If the time set by the officer passes and the nuisance hasn't been abated, the health officer in practice usually does not notify the prosecuting attorney as the statute requires (after all, the officer never provided the prosecutor with a copy of the original notice and no prosecutor support process has been established). At this point, the process defined in the statute by the State Legislature to abate the mess has simply been abandoned.

Instead, if the period in the notice has passed and the abatement hasn't taken place, the Representative of the Local Health Authority will often take off her "abatement" hat and put on her "law enforcement" hat. She'll then give a citation to the property possessor and direct the violator to appear in JP or municipal court. The citation given is *not* for failure to follow the Notice to Abate, but for having the C341 violation in the first place.

When the hearing happens, the JP or Municipal Judge will probably find the property possessor guilty of having the Public HEALTH Nuisance and fine the violator. But the judge will *not* generally order any abatement (since the criminal enforcement powers of the judge set forth in Sec. 341.091 don't include being able to order a clean-up for these violations).

When the Representative of the Local Health Authority modifies the abatement process by (1) issuing an Notice to Abate, (2) failing to include giving notice to the prosecutor, (3) seeing nothing happen, (4) abandoning all efforts to force an abatement, and then (5) issuing a citation, the health authority has decided impose their own process instead of following the one mandated by the State Legislature.

Of course, as expected, if you only do 20% of a process, you generally won't get the desired result.

Unless the violator cleans the property voluntarily, the ONLY ways that an abatement can be imposed under C341 are (1) for the Representative of the Local Health Authority and local prosecutor to actually follow the mandated (everybody follows all the "shall" words) procedure in Sec. 341.012; or (2) for the JP or Municipal Judge to over-step his or her bounds (either intentionally or in error) and order an abatement of the Public HEALTH Nuisance.

Building an effective enforcement program by hoping for regular judicial error is generally a bad idea, so we're left with the Local Health Authority doing its job as the only practical alternative. That is, if we want Public HEALTH Nuisances abated.

If Local Health Authorities — including formal health departments — would read, understand, and follow the mandated provisions of the abatement process designed by the State Legislature, local Public HEALTH Nuisances could perhaps be more readily abated. Usually, a meeting with the local prosecutor is required to make sure he or she understands the process and is willing to follow the law. The process defined by the State Legislature is sound, and if followed it will produce the fastest abatement possible where violators won't immediately comply.

However, by immediately abandoning the process described in Sec. 341.012 and issuing a citation as soon as the property possessor puts up a little fight by not abating the nuisance within the time set by the officer, **the non-compliant health authority assures that the nuisance will remain unabated long into the future.**

Nor should we overlook the fact that the person responsible for creating the nuisance may be ignored altogether because the health officer is often focusing exclusively on the property possessor.

I'm not sure why every Local Health Authority I've spoken with in Texas — and, of course, I haven't spoken to them all — ignores the process the State Legislature has established for forcing an abatement. However, I suspect that part of the reason is fear of having to inform the local prosecuting attorney that he or she also faces mandatory action. I've had more than one health department director assure me that the local prosecutor doesn't want to be notified of Public HEALTH Nuisances and

"doesn't care." It's much more likely that the prosecutor is simply unaware of the law. Maybe the prosecutor should be allowed to demonstrate that he or she cares or not rather than having that opinion forced on him or her.

Or maybe reduced abatement efforts is a staffing issue. But few counties have taken advantage of the provision that lets them appoint a staff member to represent their Local Health Authority [under THSC Sec. 121.003(c)] where they haven't created a health department.

If Local Health Authorities responded to Public HEALTH Nuisances as the law specifies, several things would result: (1) Texas would be a much cleaner and beautiful place and (2) Public Health Department staff size increases might require local department budget increases; (3) or a county employees would receive another task. Faced with these options – cleaner, healthier surroundings or smaller budgets – most places in our state have shown little willingness to pay to be cleaner.

Perhaps as voters become more convinced of the relationship between Public HEALTH Nuisances and the health of their own family, this reluctance to fund cleaner surroundings will be revisited.

But the State Legislature has this exactly right: when the property possessor won't keep his or her property clean AND when he or she also ignores orders to clean the property issued by the Local Health Authority, it's time for local government to act swiftly to force abatement through the prosecutors and the courts. This includes redefining the "person responsible" to be someone other than the property possessor if that's what is going on in the situation. The health needs of the wider community require governmental action when citizens are unresponsive.

Section 341.013 Garbage, Refuse, and Other Waste

Of course, with or without a health department or a functioning Local Health Authority handling abatement, local law enforcement can and should enforce C341 to get uncooperative residents in front of a JP or Municipal Judge to answer for criminal violations. In fact, in many parts of Texas if law enforcement fails to enforce this law, the harmful effects of unabated Public HEALTH Nuisances will continue to be present for decades.

After all, not all "criminals" are big dudes stealing things and beating on women; some "criminals" are very, very small. Mosquitoes carrying bacteria or viruses will put more people in the hospital that one big villain on drugs possibly ever could. You might also reflect on the fact that mosquitoes have the effect of making us all "blood brothers," sharing minute amounts of each other's blood and disease, up and down the street. The "Protect and Serve" motto of local police includes protecting the citizens from the effects of these "littlest criminals" too.

However, the point of this law is very simple: situations threatening public health can't be tolerated. Thankfully, there is one section of C341 that can be used to deal with just about *any* Public HEALTH Nuisance. Officers can easily learn and apply this one section, designed to eliminate the hideouts of those "littlest criminals."

THSC Sec. 341.013(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.

Determining if a situation constitutes a Public HEALTH Nuisance can be complex, and officers may have to solicit the help of local and state health departments in deciding in some cases.

This Section 341.013(c) covers most *actual* or *possible* Public HEALTH Nuisances that might impact a community. Notice that this definition can be applied to illegally dumped materials of just about any kind; such dumping almost always actually or potentially pollutes air, land, or water resources or provides breeding places for insects or rodents. We strongly encourage local community leaders to insist on law enforcement enforcing this particular provision along with the illegal dumping laws.

There's really no reason NOT to enforce this law in your city or county. It is already on the books in Texas (it does not have to be "adopted" by a local government before use); it increases officer involvement in the health of the community by ending the idea that "there is nothing we can do" in many cases; and, it will quickly become easy to use (if any pile of waste the officer sees is a "breeding place" for mosquitoes or rats, for instance, the law is easily applied).

More on THSC Sec. 341.013

There are three other subsections in Sec. 341.013 of interest and use in local enforcement. The first, subsection (a), contains a general prohibition against unsanitary conditions being allowed to exist in virtually any location:

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

Since this statute contains a specific definition of "sanitary" at Sec. 341.001(7) – *"Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission* – paragraph (a) could be used in the most general circumstances to issue a citation or trigger the abatement process

in Sec. 341.012. We say, "could be used," simply because we've yet to encounter an officer basing a Public HEALTH Nuisance on such a generality.

A second paragraph in Sec. 341.013 that may be used in situations where the waste is in liquid form that is being allowed to discharge into a public area:

> (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.

This would define situations such as we observed a few years ago in a county north of Dallas. The operator of a restaurant was having trouble with the sewer discharge system, so he simply ran a hose out the back door of the kitchen and discharged dirty dishwater directly into the borrow ditch that ran by highway US 75.

Because of the public nature of the offense, many calls went to the local police. The violator could have been charged with illegal dumping under THSC Chapter 365, or misdemeanor or felony water pollution under TWC Sections 7.147 or 7.145, respectively, or with some other Public HEALTH Nuisance discussed above. As I recall he wasn't charged with anything. The police didn't see this as being a problem. He eventually stopped when his wastewater discharge issue was solved in a week or so. This sort of thing raises the question, **"Are police authorized to simply ignore felonies if they disagree with the State Legislature?"**

Despite many complaints from passing citizens, that city government did nothing. Ignorance abounds. So does wanting to avoid "confrontation" with violators. Where kitchen, laundry, or sewer waste is being allowed to have access to public places, THSC Sec. 341.013(b) would be a good paragraph to consider

using. Or in this case just have the police charge the water pollution felony or the very expensive misdemeanor. By the way, that restaurant closed during COVID. All that's left is the memory of a few local citizens that it is fruitless to expect their city to protect the quality of water by enforcing state criminal laws. Sad legacy.

The third useful paragraph in Section 341.013 sets state policy on responsibility for Public HEALTH Nuisances at vacant or abandoned property:

> (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.

When code violations appear at vacant or abandoned properties, officers often have a difficult time locating a responsible party. Where there is still a mortgage involved, officers often spend enormous amounts of time attempting to locate the department in the *lender* who currently holds the note. Because of the frequency with which mortgage loans are sold and re-sold within the financial services industry, searching for the current *lender* is seldom fruitful. Residential loans are bought and sold by banks in blocks; often a bank simply doesn't know if it owns a particular loan without a lot of digging through boxes. A better approach is to locate the *loan servicer*, which is the entity that the original *lender* selected to handle month-to-month cash flows on the property. Although the ownership of the loan and mortgage may be widely traded, the loan servicer is usually the company originally selected.

Under loan servicing agreements with the lenders, the servicing company handles such things as processing normal monthly cash flows and foreclosures. In fact, in some cases a loan servicer can earn more in foreclosure fees that from routine month-to-month payment collection. The loan servicer is among

those parties who "control" properties, as the term is used in this paragraph. Consequently, if local officers can locate the loan servicer for a particular vacant or abandoned property, that party will often be key to getting code and Public HEALTH Nuisances abated. One good way to locate loan servicers is through the "Property Preservation Service Contacts" page at the Mortgage Bankers Association website. Motions filed in local court concerning the bankruptcy – especially motions concerning the appointment of a Substitute Trustee – often shows the loan servicer for the property in question.

Other Public HEALTH Nuisances

There are a couple of other recurring Public HEALTH Nuisance situations, the first of which may involve illegal dumping. In *Chapter 4: Primary Illegal Dumping Enforcement* we read that the most frequently used illegal dumping law – THSC Chapter 365 – *cannot* be used to deal with human waste. It is specifically excluded from both the definitions of *litter* and *solid waste* that Chapter 365 is designed to control. So, using this section from THSC Sec. 341.014 may work perfectly:

> Section 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.

Although this provision exists and may be used when the situations it describes are present, it is more common to see Public HEALTH Nuisance charges for sewage use Sec. 341.011(5); Sec. 341.011(11); Sec. 341.011(12); or Sec. 341.013(c).

Another very important section of C341 is one passed by the 83rd State Legislature to help communities deal with swimming pools, scrap tires, and other breeding areas of mosquitoes on property reasonably presumed to be abandoned or on property vacant because of foreclosure.

The law does not specify at what stage in the foreclosure that entry rights come into being. Under the most liberal, yet reasonable, interpretation one would think that if an owner vacates his property after receiving any threat of foreclosure from the loan servicer, this law then come into effect. Note that the 84th State Legislature made changes to Sec. 341.011(7) that made this section more applicable in rural areas. Entry is not restricted to local health department officers.

Section 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.

No Warning Period Required to Issue Citations for Violations

Many criminal enforcement officers use THSC Sec. 341.013(c) to issue citations and notices to appear in JP court — or a municipal court inside a city limit — to discuss the violation with a judge. Notice that no "warning" or "period to abate before citation" is required before issuing a citation under this section. ONLY the previously discussed section — THSC Sec. 341.012 — allows a Representative of the Local Health Authority to evaluate the health nuisance and give the violator some time to abate the nuisance if that makes sense.

Deputies and police simply are not given the power under this law to authorize the violator time to clean up the mess (although this often happens and warning tickets are issued), nor can deputies and police "encourage" the violator to abate the nuisance (although this often happens too). What the police, sheriff deputies, fire marshals, constables and other law enforcement officers CAN do, other than issue a warning citation, is cite the possessor for having the violation described in THSC Sec. 341.013(c), send him to JP or Municipal Court for the hearing on the violation.

Since the judge in a C341 citation case is not empowered under this law to order abatement either, what the judge can do is fine the violator and say, *"I'll see you tomorrow."* Each day of an ongoing violation is a separate offense (and the police or deputy would just keep on citing the person until he finally cleaned the mess).

On every THSC Sec. 341 Public HEALTH Nuisance case where the Local Health Authority has not acted to force abatement, the judge should be asking the Local Health Authority why they are not following the mandatory abatement process the State Legislature provided in THSC Sec. 341.012. Where the Local Health Authority exercises its powers under THSC Sec. 341.012, there will eventually be fewer court cases.

So, you can see that where the Local Health Authority fails to act to force an abatement using the process given by the State Legislature at THSC Sec. 341.012, about all the police and judges can legally do is keep running a violator through the process until the guy gets tired and cleans-up the nuisance. Or until a judge imposes a punishment not allowed under the statute — or until a peace officer goes beyond his or her authority and threatens the person with a larger charge — or until local policy changes and the health authority and prosecutors begin to follow state law.

Criminal Penalty for Violations

The punishments for these violations are at THSC Sec. 341.091 Criminal Penalties. The penalty sets a fine of from $10 to $200 *per day* for the first offense, and a greater penalty for a subsequent conviction — if the second conviction happens within one year following the first. The enhanced penalty is a fine of $10 to $1,000 and/or up to 30 days in jail. The first conviction can be in JP or municipal court, but a subsequent conviction — if handled *as* a subsequent prosecution — must move up to the county court (since there is the possibility of jail time involved).

Officers often ask the practical question of, “Do I have to issue a separate ticket for each day a person is in violation?” The answer is to discuss the matter with the JP who will be making decisions on the case. Often JP’s will agree to an alternative

method of proving to the court that a situation existed for several days. This applies on both THSC Chapters 341 and 343, the subject of the next chapter.

Options for Subsequent Offenses Within One Year

Subsequent convictions within one year of the last one can result in potential jail time and are filed through the county court system.

In many counties, smaller county court violations such as these can drag on and on before finally being adjudicated or eventually simply dismissed.

1. One technique that is followed is to continue to regard each new charge as another "first offense" and file it in the same JP or municipal court. The judge will repeatedly fine the maximum – $200 – and court costs. Since every day of a continuing situation is to be treated as a separate violation, the officer brings the offender back to the JP or municipal court more and more frequently until the nuisance is abated. This approach increases the financial cost of maintaining the nuisance, although it requires closer involvement in the case by the officer.
2. Another technique that is gaining popularity in dealing with potential subsequent offenses is for the officer to tell the violator, at the time of his initial conviction, *"You need to get that cleaned up, because every day it's like that is a separate violation. But it becomes a bigger deal. So, if I have to come back out there on this, next time I'll arrest you and take you to jail."* This approach puts as much inconvenience as possible on the continuing violator by forcing him to deal with the local jail, making bail, maybe finding an attorney, and eventually having to appear in court.

Civil Penalty for Violations under THSC Sec. 341.092

Given the complexities and doubtful returns from attempting a civil suit in most Public HEALTH Nuisance cases, in difficult cases it's likely that local jurisdictions dealing will primarily use:

(1) Repeated "first-time" criminal penalties at up to $200 per day;

(2) Occasional arrest for repeat violations within one-year of the most recent conviction and filing in county courts. and,

(3) Increased emphasis – at least in the worst situations – on Local Health Authority involvement under THSC Sec. 341.012 to bring unresponsive offenders under local court orders to clean properties. This probably is much more effective than civil suits involving the state.

All things considered, the cost and amount of local administration required for a civil suit when compared to the potential return work together to make this civil suit power unused by most jurisdictions.

Special Powers of Women to Force Nuisance Abatement

Perhaps I am simply a product of how I was raised, but I hold the position that women are simply better at building and maintaining communities than men are. Neighboring men may be having a heated argument in the front yard over politics, where the fence has been built, or other pressing issues, while around back their wives are borrowing eggs and talking about their children across that same fence.

Fairly or not, the preponderance of health care decisions seems to fall on women. When a kid gets a scrape in play, he usually runs to mother to be patched up and kissed rather to dad for a lecture to "be tough." When a child is sick and must be taken to a doctor, more times than not it's the mother who misses work to get this done. Admittedly, some of this is the misogamy

that is so often built into our relationships and the fact that we still don't value the work of women as highly as we do that of men. But it may also be built on what I take to be a universally proven fact, that women are simply more alert to issues of the family, especially when health and illness are involved.

As far as Public HEALTH Nuisances are concerned, there are several pieces of information that Texas women can use to have to take better care of their families and to better direct the men with whom they come in contact. We suggest a public education project aimed at women with these points:

1. Public HEALTH Nuisances are widespread in Texas and are dangerous. Texas children are particularly exposed, since they generally spend more time outside than other family members.

2. If a place in one's back yard, in the alley, or up the street is a where water is held following rain, anywhere in Texas it is a very likely place for mosquito breeding.

3. Mosquitoes have been called (Time Magazine, July 6, 2015) the "world's deadliest animal." Mosquitoes spread over 700 million infections annually, causing two to three million deaths worldwide each year.

4. Texas is a central point for many of the diseases than these animals spread, including West Nile Virus, Zika, Dengue Fever, Malaria, Encephalitis, and Yellow Fever. The most common Texas mosquitoes are potential transmitters of these diseases. Some of these diseases have no cure and can lead to death or to lifelong lingering weaknesses.

5. Property possessors (owners and renters) are required and expected in Texas to keep their properties clear of Public HEALTH Nuisances, just as soon as they realize that a nuisance exists – not when ordered to cleanup by the government.

6. In most residential property situations, women are usually

as responsible as owners or possessors as are men.

7. If you see any situation described by the following, you have encountered a Public HEALTH Nuisance:

> THSC Sec. 341.013(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**.

8. Tolerating a Public HEALTH Nuisance on property one possesses, especially after having learned of its existence, is a crime in Texas, punishable by a fine of $10 to $200 per day for a first offense and a fine to $1,000 and/or 30 days in jail for a second conviction. Courts are directed by the State Legislature to treat each day a Public HEALTH Nuisance is allowed to exist as a separate offense.

9. If you tolerate Public HEALTH Nuisances on property you possess, you risk exposing yourself and your children to disease and possible death; you also risk a substantial ongoing fine and possibly jail.

10. It will be smarter and cheaper for your family to cooperate in the effort to clean Texas than to ignore these issues. Be a leader in your neighborhood rather than just ignoring these problems and hoping the kids don't get sick and you wind up being fined.

11. Some day the people of Texas will decide that they will no longer tolerate Public HEALTH Nuisances to exist in their neighborhoods. Why not make that day be today where you live?

Remember: virtually all illegal dumping creates a Public HEALTH Nuisance, so deal with both issues.

Chapter 7: Rural Public Nuisance Enforcement

THSC Chapter 343 is a popular law that aims to eliminate Public Nuisances in unincorporated areas. Here we discuss this law and compare it to the more efficient THSC Chapter 341.

In this chapter we'll refer to THSC Chapter 341 and THSC Chapter 343 as "C341" and "C343." Also, the terms "public nuisance" and "public health nuisance" are shown as "Public Nuisance" and "Public HEALTH Nuisance" to emphasize the importance of the difference.

The previous chapter dealt with C341, which is used statewide – inside cities and in all unincorporated areas – to respond to Public HEALTH Nuisances. This chapter deals with Public Nuisances … notice the word *Health* is missing in this group of violations.

Efficient use of C343 can be challenging for these reasons:

(1) Confusing. There are thirteen violations in C343, but not all thirteen apply to the same unincorporated areas;

(2) Redundant. Five of the thirteen listed Public Nuisances are better handled under other state criminal laws;[1]

(3) Slow. A mandatory "built-in" 30-day warning must be given by the county before a C343 citation can be issued.

[1] Consider using THSC Chapter 365 to address violations in 343.011(c)(9), (c)(10), (c)(11) and (c)(12) and C341 to address the violation in 343.011(c)(13). Using these other chapters does not require a 30-day warning.

When considering using this law, officers should think:
LIMITED

Using C343 is very different from using C341. In fact, a particular situation may violate one of these two laws, but not the other. Or a situation may be simultaneously in violation of both, in which case both violations should be cited.[2]

C343 is currently in force statewide, without having to be adopted by any local government. Our legislature first adopted it on behalf Texas in 1989 but at first limited it in the counties and nuisances it addressed. It has been subsequently modified to now apply to all counties in Texas and address thirteen nuisances.

The other two primary anti-dumping laws, THSC Chapters 341 and 365, were also adopted that year. As is true in all three cases, the only question is whether local governments are enforcing their provisions. Realistically, it's only been about 35 years since these provisions became law, practically "yesterday" in some jurisdictions.

Counties may use C343 to abate Public Nuisances in parts of their unincorporated area. However, there are restrictions as to the exact locations in rural areas where its provisions apply:

[2] If a situation is simultaneously a violation of C341 and also needing a 30-day warning under C343, one way to help the JP understand the situation is this: (a) issue a citation for the C341 violation and (b) write on the bottom of that citation *"This constitutes a 30-day warning of the possible violation under THSC Section 343.011(c)(and add the number of the possible violation)."* Verify this approach with your county attorney before using as they may want a different way of giving notice. When the JP receives the initial C341 citation writing the C343 notice on the bottom of the C341 citation will alert him/her to the fact that a possible C343 violation may be forthcoming.

1. If the location is in an INCORPORATED area, this law cannot be used, regardless of the size of the city. However, some of its provisions may be applicable in a city's ETJ;
2. This law does NOT apply to "agricultural land" (i.e., "land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code"). So, rural farmland is not subject to this law, although the farmhouse itself is likely included;
3. This law generally does NOT apply to facilities that are permitted by a state agency;
4. This law does NOT apply to facilities licensed or permitted under THSC Chapter 361 SOLID WASTE DISPOSAL ACT, such as a landfill located in the unincorporated area;
5. SOME of its thirteen prohibitions MAY apply to all other UNCORPORATED areas of Texas (excepting these limitations) and SOME are applicable to even more limited locations, such as platted subdivisions in unincorporated areas.

Officers are advised to carefully read the restrictions attached to each of the thirteen violations listed in this law, be sure that the violation happened at the location specified and then be aware that the location of the violation may well be an issue in court.

For example, specific additional limitations apply in several of the thirteen Public Nuisances described in Sec. 343.011. The major division in locations is between laws applicable to "neighborhoods" (platted subdivisions in unincorporated areas) and those applicable to non-neighborhoods. In all cases, the initial four restrictions above also apply. In cases where this law cannot be used because of the location limits of a particular violation, C341 may fit the situation.

<u>Required 30-day warning under this law ONLY</u>

Additionally, <u>none</u> of the thirteen Public Nuisances this law

addresses become citable violations until a period of 30 days has passed after the county gives a warning notice to the person apparently violating Section 343.011(b). Although the statute does not require such notice to be written[3], most county procedures and best practices require written form. When the violation involves clutter, having a built-in 30-day warning works fine. But when the nuisance involves sewage being discharged onto the surface[4], using a law that requires a 30-day pre-citation-and-abatement-notice warning may be the wrong thing to do. In sewage cases we urge officers to immediately apply the Public HEALTH Nuisance provisions found in C341.

When the legislature added THSC Sec. 343.011(c)(13) to this law to deal with a swage issue, it probably made an error. C341 already contained several immediately enforceable prohibitions against open sewage disposal systems, so use one of those.

Texas Health & Safety Code Chapter 343: Abatement of Public Nuisances Contents

Overview

This law closely follows the structure of C341 as it also identifies and seeks to control nuisances to public wellbeing. Unlike C341, however, and as discussed above, C343 is enforceable only in specific unincorporated areas of the county.

To repeat, notice immediately that whereas C341 dealt with "Public HEALTH Nuisances," C343 deals with "Public Nuisances." The situations addressed by C343 are not identified by the legislature as those likely to immediately impact public health, so a mandatory 30-day grace period has been built into C343 as

[3] THSC Sec. 343.012(a)(2).
[4] See THSC Sec. 343.011(c)(13).

well as a less intense abatement process that doesn't include the Local Health Authority.

C343 is particularly useful in that it also **provides county governments with OPTIONAL powers to abate nuisances themselves and set liens** in situations where violators won't clean up their property voluntarily or as directed by a Justice Court, *provided that* the county adopts a set of procedures designed to provide maximum protection to the property holder (*see* C343 Subchapter C).

This statute also contains potentially useful citizen suit provisions whereby parties other than local governments can bring civil actions against persons who refuse to abate Public Nuisances.

This Law Has Evolved Over Time.

Originally limited to Harris County, since 1989 C343 has slowly been modified and made applicable in selected unincorporated areas of all Texas counties. It's initial focus was to provide a way of abating nuisance buildings in rural Harris County.

In 2001 the potential usefulness of this statute was increased by the 77th Legislature, which expanded places in unincorporated areas where trash, waste and many other abandoned items cannot be stored to include within 300 feet of any public street throughout the unincorporated area of all counties.

The 80th Legislature added a new waste-related nuisance: "discarding refuse on a property that is not authorized for that activity." Since this is essentially the definition of *illegal dumping*, why not simply use the more flexible THSC Chapter 365 for dumping violations listed under C343?

As mentioned above, this law requires that a potential violator be given 30 days following formal notice from the county to

abate a nuisance before a citation can be issued. **No other place in Texas environmental law imposes such a mandatory waiting period prior to an offense being created.** An earlier attempt by the Legislature to decrease this time to 10 business days from the current 30 days was not successful.

Over the process of these modifications the legislature has made C343 applicable to a greater number of counties until today it applies in all 254 counties in our state.

Important Definitions

The definitions contained in THSC Sec. 343.002 are all important; however, in reading them, please take note of the following:

> **"Building"** means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other removable property;
>
> **"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;
>
> **"Neighborhood"** means: a platted subdivision; or property contiguous to and within 300 feet of a platted subdivision;
>
> **"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;
>
> **"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.
>
> **"Refuse"** means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses; and,
>
> **"Rubbish"** means nondecayable waste from a public or private establishment or residence.

> **"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.

The (B) definition of weeds here means that it can be very short indeed, much shorter than in most city ordinances. After all, how tall does a weed have to be to harbor a rat or mosquitoes?[5]

Like C341, this law establishes a positive responsibility on each of us not to permit the nuisances defined here:

> Sec. 343.011(b) A person may not cause, permit, or allow a Public Nuisance under this section.
>
> *Note: This section does not contain language "... when notified to cease by law authorities." The initial position of C343 is that every person already has an ongoing legal duty to eradicate Public Nuisances on property he or she controls. If a person does not do so and violates one of the specific thirteen provisions, a process of enforcement then takes place with reference to that specific violation. That focused process included a 30-day warning to the personal responsible before a JP court gets involved.*

But a Justice Court won't get involved in the process until a citation has been issued, which can't happen under this law until 30 days following the giving the violator notice by the county.

Consequently, by the time a deputy, constable, or other authorized individual shows up to issue a 30-day warning notice, the person possessing the property has already been violating Sec. 343.011(b) by ignoring his or her responsibility. It was the ignoring of state law that triggered the enforcement process.

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[5] This shorter weed height may come into play in THSC Sec. 343.011(c)(3) and (4).

Also notice that the owner or possessor of the property where the Public Nuisance is allowed to exist is not the *only* person responsible. If a neighbor "causes" a Public Nuisance on someone's property, the neighbor is also responsible.

In the case of THSC Sec. 343.011(c)(2) – cluttered properties in platted subdivisions – there is an additional ten-day grace time beyond the 30-day initial notice. Although grace periods to clean up are given under this law, it's still the responsibility of a person owning or controlling property ALSO to keep it free of Public HEALTH Nuisances.

As in the case of C341, this law can become the basis for widespread public education in a community. For many Texans, simply informing them as to the requirements of the law is sufficient to achieve compliance.

What A "Public Nuisance" Is Under C343

This law generally applies to only the unincorporated parts of a county, and even this is further restricted in some of its provisions.

Consequently, each of the thirteen Public Nuisances defined have their own area where they are in force. The areas where they apply are easy to determine by reading the subsections, but officers using this law need to be very certain of *exactly where* the violation is taking place. The difference between a violation under C343 and behavior that is perfectly fine may be a matter of a few feet. This is one of the things making this law difficult to apply and explain to residents.

This law describes thirteen situations that are nuisances. Several of these will probably be helpful in controlling illegal dumping in your community, but, again, if illegal dumping is the problem, why not simply use the law designed for that violation, THSC Chapter 365?

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;

Note: This section applies to "refuse," which has a wide definition, on "premises" (virtually all private property, as defined), in "neighborhoods," (platted subdivisions and contiguous property within 300 feet of a platted subdivision). For instance, many small neighborhoods located in the unincorporated area near Lake Texoma in Grayson County are covered by this law, as are the residents' practices in keeping, storing, or accumulating refuse. There is no requirement for the plat to have ever been approved by the commissioners' court. Note the definition of "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;

Note: This section, like the one before it, also applies to neighborhoods located in unincorporated areas as well as all locations within 300 feet of a public street anywhere in the unincorporated areas of the county, except land classified as "agricultural." As a great deal of rural dumping occurs within 300 feet of a public street somewhere in a county, this section can be effectively used to reduce visible waste throughout unincorporated areas of Texas. Tolerance of trash-heaps and abandoned things in rural areas and neighborhoods reduces property values and can be controlled through this section of the law. The additional ten days to be added to the

thirty-day notice period applies to this violation only. Simply moving waste to an unobservable location, however, does not allow the new location to be a Public HEALTH Nuisance under C341. Complying with one law may constitute a crime under another. This can be difficult to explain.

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

Note: Here the term "premises" does <u>not</u> simply apply to private property located in unincorporated "neighborhoods," but includes private property in most rural locations (excepting agricultural land). For example, the owner of an illegal tire dump is probably always in violation of this law, even though his property is located outside a platted subdivision (if that dump is not located in some excluded area). The mosquitoes that breed in the water trapped in his dumped tires have no problem swarming to the backyards of the homes located nearby. This also goes for the rats and Rattlesnakes that may regularly roam from their homes in the tire pile. The point behind this, and many other such provisions in state law that impose some limit on how we use our personal property, is this: we are free to use our property in any way we wish, if we don't commit a crime or violate the rights of our neighbors to peacefully use their own property. Of course, the mess might be legal under C343 but constitute a "Public HEALTH Nuisance" as defined by C341. In this case, the officer would simply write the citation for the C341 violation immediately (no 30-day notice is required on C341 Public HEALTH Nuisance violations). Note also the possibility of a commissioners court acting under its powers in THSC Chapter 365.017 to force the clearing of dumped material on rural private property.

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

Note: Limited to selected places within "neighborhoods." When you read the law itself, note the definition of "weed." It is doubtlessly stricter than that applying inside your own city as it prohibits weeds of any height if they are tall enough to be an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests.[6] Once this restriction becomes known to residents of platted subdivisions, they will have a new reason to squabble over their neighbors. Or maybe even sue them.[7]

(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;

Note: This law applies to a "building" (as defined) anywhere in the unincorporated area of any county in Texas (except excluded areas). It is not just applicable to dilapidated structures in rural neighborhoods, although it can be effectively used to address these "near-dumps" too. For example, if a rural building is partially destroyed by fire, or abandoned, and is liable to become an unsafe playing location for kids the owner would be in violation of this law for allowing this nuisance to remain unabated following a 30-day notice period.

(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;

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[6] THSC Sec. 343.002(11)(b).

[7] THSC Sec. 343.013(b) gives an affected party, such as a neighbor or property owners association, the same rights to seek an injunction as the county to *"prevent, restrain, abate, or otherwise remedy a violation of this chapter."*

(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;

Note: Dumping refuse by an individual in easements is certainly covered by this statute, although the provisions of the Texas Litter Abatement Act (THSC Chapter 365) could perhaps be more easily used. If the county refused to cut weeds at a rural intersection and these weeds were creating a "hazardous visual obstruction," the county government itself would perhaps be in violation of this section.

(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;

Note: Under this definition, a landowner who dumps on his or her own property under a power-line easement would, in addition to any other dumping laws, be in violation of this provision. THSC Chapter 365 does not allow general dumping on one's own property either.

(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;

Note: This is actually a good definition of the term illegal dumping, *although the prohibited actions in THSC Chapter 365 also include* receiving *waste at an unauthorized location,* transporting f*or disposal there, and even using someone's dumpster without permission. Why not simply use THSC Chapter 365 for the dumping violations instead of this and numbers (9), (10), and (11) to the degree illegal dumping is the actual violation?*

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

Note: This provision duplicates Public HEALTH Nuisances defined in C341 and is more cumbersome to use. One might also question the wisdom of trying to deal with sewage with a law that requires a statutory 30-day notice period. This provision was probably added by legislative staff drafters who were unaware of C341's extensive provisions dealing with sewage issues. It seems out of place here, especially given C343's avoidance of sewage issues up to this point.[8]

However, remember that according to the provisions of this statute, the thirteen nuisance situations under C343 do not constitute a violation even if located on unincorporated land that is:

(1) A site or facility regulated by a state agency;
(2) A place licensed or permitted under the Texas Solid Waste Disposal Act; or,
(3) Land qualifying as "agricultural" for tax appraisal pur-

[8] C343 was never intended to deal with sewage issues (private conversation with one of the legislation's authors).

poses.

C341 contains none of these location restrictions and no mandatory warning, hence its popularity. C341 can be used virtually anywhere in the state without fear that the violation alleged happened a few feet elsewhere.

Thus, under C343, a dilapidated barn on agricultural land would not constitute a nuisance whereas a dilapidated house trailer on a small rural plot may meet the criteria. Generally, in Texas, persons engaged in agricultural activities have more latitude to operate in "near-nuisance" circumstances than do others but remain subject to THSC Sec. 341 as far as Public HEALTH Nuisances are concerned and most other environmental criminal laws.

Variances

Under THSC Sec. 343.0111, a commissioners' court has the power to grant a variance to a classification of Public Nuisance, if the court follows mandated procedures recording the logic of their decision. I know of no case where the commissioners' court has issued such a variance, but the fact that this power is available is another point reinforcing the support that the State Legislature has given to local government in dealing with Public Nuisances.

Penalties for Violation

There are criminal penalties for committing an offense under this law. Persons causing, permitting, or allowing nuisances to exist are responsible for eliminating them. However, if a person is unwilling to obey the law voluntarily, the JP imposes a fine and orders abatement.

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.

Thus, under C343, a person has committed an offense <u>if</u>:

(1) The person causes, permits, or allows a Public Nuisance to exist;

(2) A county official, agent, or employ provides the person notice of the nuisance; <u>and</u>,

(3) The person fails to remedy by the 30th day after receiving the notice.

The first conviction, which would normally occur in a Justice of the Peace Court, would cost the violator $50 to $200 and court costs. <u>Upon this conviction, the judge has a positive duty under this law to order the abatement of the Public Nuisance.</u> This provision is missing from the penalties for a Public HEALTH Nuisance under C341. In that law it takes the Local Health Authority to force the abatement of a Public HEALTH Nuisance.

If the person fails to abate the Public Nuisance, he can be charged again with a separate violation for each day that the

nuisance continues unabated.[9]

Second and subsequent offenses can become more expensive for the violator: $200 to $1,000 and up to six months in jail for each subsequent violation, no matter how long after the initial conviction they occur. By filing charges day-after-day and quickly forcing this issue into the county court system, sufficient pressure can be brought against any violator to eventually remedy the situation.

The statute is unclear as to whether a separate 30-day notice must proceed second and subsequent citations in situations where the violator doesn't abate the nuisance. Maybe this is another reason to use C341 when possible.

As is true in any criminal violation, a citizen can file a complaint with the magistrate or municipal, county, or district attorney to get the process underway. Usually, however, the citizen would request a sheriff's deputy, constable, fire marshal, or local health department officer to be the initial point of contact with the violator.

In many rural areas of Texas, the sheriff and prosecutors are uncertain of their powers to enforce this law. Consequently, property owners may experience a certain amount of frustration as the local law enforcement system gets up to speed.

The secret to final victory is to keep the pressure on, involve the commissioner for that precinct, and get the newspapers to run stories intended to educate the public. But be patient. After all, this criminal law is only about 35 years old, and it takes a while for news to get around.

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[9] Officers often ask the practical question of, *"Do I have to issue a separate ticket for each day a person is in violation?"* The answer is to discuss the matter with the JP who will be making decisions on the case. Often JP's will agree to an alternative method of proving to the court that a situation existed for several days. This applies on both THSC Chapter 341 and Chapter 343.

Affected parties can file a lawsuit

A county can sue for enforcement under THSC Sec. 343.013(a). An unusual and potentially very useful provision of this law is the civil injunctive powers that affected parties have in these situations.

> 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.

Thus, the property owner's association or an individual neighbor in a platted subdivision at Lake Texoma in Grayson County can seek an injunction preventing another property owner from continuing a Public Nuisance under this law, such as refusing to tear down a fire-damaged house or improperly storing waste or having weeds that are high enough to harbor rats or mosquitos, according to the definition.

Property owner associations in Texas have no problem with filing liens on owners who fail to pay small annual assessments, and in some situations, lots are even seized and sold for unpaid taxes and assessments. It would probably be an easy step in many cases for an association to take advantage of THSC Sec. 343.013(b) and seek a court order to stop a resident from maintaining a defined nuisance to the detriment of the community.

The court can order the loser to pay the costs of the winners in these suits. In this section of the law, the Texas State Legislature has provided citizens with the tools to be used to protect themselves from Public Nuisances in unincorporated areas.

County Abatement Powers Under THSC Chapter, Subchapter C

County governments can act to abate a Public Nuisance themselves if the responsible person fails to take care of the problem. **This power is optional and does not have to ever be adopted or used.** Moreover, once a set of these defined procedures have been adopted by the county, their use is entirely at the discretion of the commissioners' court. Many of the of the procedures described in Subchapter C are to safeguard the rights of the property during the process.

The primary step for a county to take before beginning a program of nuisance abatement is to adopt abatement proce-

dures defined in Subchapter C that are consistent with the general purpose of C343. Speak with your county attorney to determine if your county has adopted such procedures. Probably fifty counties, large and small, have done so over the past few years, so there are great examples of good procedures available.

Sometimes the opportunity to adopt this optional provision is confused with the error of thinking a county must "adopt" the whole of C343 before undertaking simple enforcement of Subchapters A and B. This is incorrect. Counties can use Subchapters A and B immediately, even if they never adopt procedures under Subchapter C. But if a county plans to use processes to abate a nuisance without the consent of the property holder, the county's procedures will have to closely follow Subchapter C.

C341 and C343 Comparison Chart

C341 and C343 are similar enough to be confusing in several aspects. Learning the content of both and being able to move easily between them will help officers working to stop illegal dumping … and its effects … in rural Texas.

Chapters 341 and 343 Comparison				
Law	**Enforced**	**Warning?**	**Court**	**Abatement**
341 Public Health Nuisance	Everywhere in Texas	Not Required	Municipal JP	Local Health Authority Only
343 Public Nuisance	Only in Limited Unincorp Locations	30-day Mandatory	JP	JP