

Reading for class

TIDRC015
Current Topics in Environmental
Enforcement

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1. A very Good Dumping Enforcement Option for Municipalities

We usually think that the best way to deal with illegal dumping inside a city is to use municipal ordinances against “refuse on a lot” or some similar code violation. After all, most folks involved in local environmental enforcement ARE code officers and using codes to respond to dumping is second nature.

However, there are locations and circumstances in many cities that prevent using municipal codes as the single response to illegal dumping. Codes simply don’t reach everywhere. Consider, for example, these common locations where codes are unavailable or unusable:

In Unincorporated Areas, Including Most ETJ’s

- Texas cities organized under General Laws (about 75% of Texas municipalities) cannot enforce their codes beyond the limits of the municipality;
- Local Government Code Sec. 217.042 allows Home Rule cities to reach up to 5,000 feet into their ETJ to enforce nuisance ordinances.

Some Locations Inside Many Cities Where Codes Don’t Work

- In cities having no code enforcement program (300 of 1,200 cities don’t);
- In cities that only enforce against “owners” and don’t include tenants or residents as responsible parties under their codes;
- In economically deprived and politically powerless areas of cities (sometimes to seems as if there are two different sets of municipal codes in some cities) where lax enforcement is a local practice;
- Where COMMERCIAL dumpers are targeting poor neighborhoods with their waste and cities are simply overwhelmed by the volumes. When a city foregoes aggressive enforcement against commercial dumpers, there is not enough money available to clean behind violators and code violations are quickly overwhelmed;
- In and around hundreds of homeless camps of various sizes (as far as providing solid waste services is concerned [i.e., under THSC Sec. 363.113 obligations], consider homeless camps as underserved neighborhoods with sometimes difficult access issues);
- In cities where the systems supporting code enforcement are weak (i.e., dysfunctional municipal courts; cities where code management or elected officials have their thumb on the scale directing code enforcement away from some areas);
- In cities where codes are not used on commercially zoned properties (the amount of commercial property in a city varies: Austin 28%; DFW 18%; Houston 13%);
- On public property (i.e., parks, streets, alleys, government property; creeks);
- On accessible commercial property (i.e., railroad right of ways; open oil/gas leases; vacant land in industrial parks);
- On abandoned residential lots and in structures where history has made code enforcement an administrative tangle (i.e., absent or deceased owners; places with multiple contentious out-of-town owners; properties where ownership hasn’t been established yet);

- Where code enforcement officers hold back because they are themselves in violation of TDLR ethical rules governing officer ethics [16 Texas Administrative Code Section 62.70] and don't want to attract attention (i.e., where officers are dishonest; chemically impaired; abusive; ignoring crimes that they are required to report; misusing bite stick; using another officer's registration number).

Where codes can't be effectively used to respond to illegal dumping, the most commonly used criminal law inside and outside cities is THSC Chapter 365, the Texas Litter Abatement Act.

This is a criminal law that is in effect in your city or county now, without your governing body having to first adopt it. The State Legislature has already done that on behalf of the people of the State of Texas ... like they do with ALL criminal laws. The only question is whether a city or county knows about this law and is using it to control dumping.

Except in rare circumstances, disposal of waste on one's property is not permitted [THSC Sec. 365.02(l)]:

Disposal on one's own property is NOT legal under this law;

- If you are disposing on your own property to save or make money (*i.e.*, for the purpose of economic gain); OR,
- If the waste comes from a commercial activity; OR,
- If you do not actually own the property where the waste is generated (*i.e.*, perhaps the source location is being leased or rented rather than owned); OR,
- If you do not actually own the property where the waste is being disposed OR,
- If you're not an individual but a partnership, corporation, government, or some other category of non-individual ...

If any of these apply, THEN you are prohibited from using your own property for disposal under this criminal statute.

This law sets a C, B, or A Misdemeanor or State Jail Felony based on the *weight* or *volume* of the waste involved and whether or not the dumping is being done for the purpose of economic gain or for non-economic convenience. Dumping for any reason any amount of "litter" or "solid waste" (both defined terms in this law but having extremely wide scope) under five pounds (or five gallons in volume) is a Class C Misdemeanor.

One of the powerful provisions of THSC Chapter 365 is that it requires of anyone convicted at any level to also perform 1 to 60 hours of community service picking up litter (or working in a recycling center).

Application

(1) Suppose that a person subject to code enforcement in your city refuses to abate refuse on his lot as required by local codes. Rather than enter into endless discussions with him, have your police or TCOLE-certified fire marshal issue him a citation for dumping under 5 pounds in violation of THSC Chapter 365 [the violation is at THSC Sec. 365.012(a)]. This charge can be heard by the same Municipal Court that processes code violations, except this charge is a criminal violation. Upon conviction, the Court would impose a fine of up to \$500. But more importantly, the Court would also order the violator to serve 1 to 60 hours (at the Court's discretion) picking up litter in the city. This

sentence is pretty magic: it can transform an illegal dumper into a person helping clean-up your city.

(2) Local police or a certified fire marshal may decide to use THSC Chapter 365 in non-code situations. In that case, the officer would simply cite the violator for a C Misdemeanor and process him through Municipal Court with the same result and community service. As they become familiar with this law, local law enforcement will learn the way to apply it to larger quantities. They will find themselves developing cases at the Class A Misdemeanor and State Jail Felony levels. Usually these more serious charges (for more serious levels of dumping) are also resolved with Agreed Orders in lieu of prosecution that results in 10 to 100 tons of local waste being abated.

Either way, using THSC Chapter 365 results in using the violator to clean his and other's dumping rather than placing that burden on the taxpayer.

Using this "Dumper Abates" policy rather than a "Taxpayer Abates" approach is very popular where used.

2. Illegal Dumping Enforcement is a Local Government Responsibility

Why doesn't the TCEQ respond to illegal dumping complaints? Well, it DOES. It is in partnership with local communities, but sometimes the local communities don't understand that under state policy that they, not the state, have primary enforcement responsibility for almost all illegal dumping cases.

The 2,800 people at the TCEQ are responsible for overseeing 73 separate programs with about 425,000 active organizations and individual participants. Violations of the Administrative Rules governing each of these usually surface from routine self-reporting or on-site inspection by TCEQ employees.

When the TCEQ approaches a solid waste problem, it almost always applies Administrative Rules – rather than Criminal law – in doing so. These Administrative Rules are used to govern the routine operations of landfills and the movement and processing of solid waste in our state, among other things. Violations are responded to either by communication from the Austin headquarters or from one of the sixteen regional offices the agency maintains around our state.

Illegal dumping enforcement is a different matter: very few illegal dumpers self-report having violated the criminal law. Almost all illegal dumping complaints *arise* locally, coming from a citizen who sees evidence of dumping or an officer on patrol.

Like burglary, assault, and most crimes found in the Penal Code, law enforcement officers almost NEVER see the actual violation. Occasionally law enforcement management will defend their departments slow response rate with the statement, *"Well, the officer has to SEE the dumping take place before he can act!"* This is simply being made-up. Few if any crimes in Texas require the officer to witness the violation. In fact, can you imagine the chaos if that were true about EVERY sort of criminal violation?

Although most illegal dumping complaints arise locally, occasionally the TCEQ receives information about dumping directly from the public. They forward these to local government to be addressed. Since in most cases it makes sense to use criminal law to respond to dumping [and virtually all criminal law enforcement resources in the state are in county sheriff's departments, constable offices, fire marshal departments, and city police departments] the quicker the complaint can get to the right local government the better.

In any event, the TCEQ has very limited staffing to respond to environmental crimes (the TCEQ has

only about a dozen *Criminal Investigators* in the agency). None of the TCEQ Environmental Crimes Unit (“ECU”) staff are sworn law enforcement officers, although they are all expert in investigating environmental crimes. When arrests must be made, the TCEQ ECU partners with their counterparts at the Texas Parks & Wildlife Department (who ARE certified law enforcement officers), a federal agency such as the EPA’s Criminal Investigators, local law enforcement, or some other agency with arrest powers. Because of the size of Texas and the amount of environmental crime the TCEQ ECU investigators almost always work on large, complex, or unique violations.

Another factor pushing response to most illegal dumping down to the local level dates from a policy decision in 1996. Because of the way that the State Legislature divided funds generated from tipping fee surcharges, in that legislative session more funds to implement regional solid waste management plans went to the twenty-four regional planning commissions in Texas than to the TCEQ predecessor agency to pay for solid waste experts in their regional offices. Consequently, fewer solid waste resources were available at the TCEQ, and local governments had to step-up enforcement.

In January 1996 the state sent a letter to every county judge in the state advising them that illegal dumping enforcement (except in cases where there was an *“immediate endangerment to human health and/or or the environment”*) was henceforth to be the responsibility of local government.

The letter stated that upon receipt of an illegal dumping complaint, the TNRCC (the TCEQ’s predecessor agency) would request the citizen making the complaint to contact the local illegal dumping enforcement official, county sheriff, or other local criminal enforcement agency. This remains the policy today and it still operates as stated in 1996. Additionally, some complaints are made to local government by the TCEQ itself.

As local government people changed over the twenty-seven years since this policy decision was taken, few officers and elected officials today remember these events. Consequently, an elected official may ask, *“Why isn’t the TCEQ doing something about the dumping in our county?”* or an enforcement officer may complain, *“The TCEQ doesn’t help at all; they just send us their cases.”* Sometimes a history lesson is in order.

Letting the locals take the lead in dumping cases is a good policy. Let the TCEQ handle the ADMINISTRATIVE cases that arise from their facility inspection and permitting process (and the multi-jurisdictional criminal violations) and let the cities and counties closest to the actual dumping handle most criminal cases.

Over the years, some cities and counties have done a great job of enforcing state criminal environmental laws in their jurisdictions, especially in dealing with small scale illegal dumping; reacting to Public Nuisances and Public Health Nuisances (both crimes in the state); and handling some violations of the Texas Water Code (such as misdemeanor and felony illegal outdoor burning; misdemeanor water pollution; used oil dumping; hazardous waste storage cases; medical waste cases; and lead-acid battery dumping). More complex cases may best be handled by local law enforcement partnering with the TCEQ ECU.

All this lays a mandate on local government to learn and apply these state criminal laws, including those laws where the violation directly overlaps with municipal code violations.

To our way of thinking, this also necessitates that code enforcement officers learn the essentials of criminal environmental law so that they can better identify these violations where they arise. It *also*

requires city management and local law enforcement to learn these criminal laws and make the commitment to use them when needed.

In some places there is still considerable resistance by local police to get involved in this area of law enforcement. However, if local elected officials (and citizens) want their community cleaner, there is literally no alternative to local police involvement.

Otherwise, expecting the TCEQ to respond to routine illegal dumping cases will result in absolutely nothing happening in too many situations. Illegal dumping enforcement is a local government responsibility.

3. Why does nothing seem to happen in many dumping cases?

Why is it that we can drive by the same illegal dumping or Public Health Nuisance every day and see that apparently nothing has happened, the obvious violation remains?

- Is it because the code enforcement officers, registered sanitarians, and other environmental enforcement officers simply have too much to do to respond to every mess, even the ones most easily seen?
- Is it because the officers and their managers erroneously believe that *“A man can do whatever he wants on his own property!”* ... ignoring that this has never been true in Texas? For instance, you can’t commit a crime on your property and then demand that it be overlooked because of where the crime happened.
- Is it because the property owner is simply too important a person to be expected to follow state anti-pollution laws, so the rest of the community simply must indulge him?
- Is it because officers have already attempted to respond to this chaotic situation and have been unsuccessful, so they have decided to pass that situation by and work on something else?
- Is it because officers know that the owner of a problem location has died without apparent heirs, or has moved to another city or even out of state, so it has been impossible to bring pressure to clean the property or even talk with current owners?
- Is it because the Local Health Authority simply doesn’t know his or her responsibility to force the abatement of Public Health Nuisances ... or perhaps the Local Health Authority has — consciously or unconsciously — put themselves above responding to mandatory state law in these matters?
- Is it because the officer who would have worked on a particular situation has been threatened somehow, either physically by the violator or economically by his own management threatening to fire him if he persists in a particular situation?
- Is it because the officer has been bribed in some way to ignore the situation? I’ve heard of bribes involving sex, money, and family ties; the third seems to work best in rural areas.
- Is it because officers and their managers simply ignore some parts of the city or county because of the poverty or the skin tone of the people who live there ... or because there are language or cultural differences that have proven to be too difficult to overcome ... or because *“Those people are crazy and armed”* ... or because *“Everybody knows that’s just how those kinds of people prefer to live”*?
- Is it because Chief of Police tells his or her officers to ignore illegal dumping because *“It is not a real crime!”* ... or the District or County Attorney who would prosecute a case doesn’t do so out

of ignorance of Texas criminal environmental laws ... or because the violator is a big political donor ... or because city and county elected officials refuse to provide funds for pollution control ... or just can't be bothered?

- Or has a local elected official or prosecutor decided that he or she knows better than the State Legislature and has, in his or her own mind and actions, simply taken illegal dumping laws off the statute books?
- Is it because — all the way up and down the enforcement system — the participants have agreed that *"There's nothing we can do!"* about a particular situation?

The answer to each of these questions is, "Yes! That's exactly why dumping and polluting are ignored in some parts of Texas!"

Because I have heard each of these cited at different times over the years in different parts of Texas to explain inaction. And you could easily add your own unique reasons for chronic inaction on the part of your local government in some situation. You know what goes on in your place best!

However, in all the years I have never heard it said anywhere in Texas, "*We don't know where any dumping or polluting is in our community. We have nothing to work on.*"

Think about illegal dumping of which you are aware. Is not being able to find illegal dumping or Public Health Nuisances or other kinds of pollution the problem? Or is there, instead, something not working right in our response?

Just to quote Captain Jack Sparrow, *"The problem is not the problem. The problem is your attitude about the problem."* Or as one twentieth century philosopher said, *"The problem is not our situation, but rather the relationship we take to the situation."* That's a little less personal than Captain Jack, but it's the same idea.

Once we're trained to recognize what we're looking for, we generally can easily find illegally dumped tires and other solid waste and litter, probable water pollution, dumped used oil, medical waste, hazardous waste, dumped lead-acid batteries, and so on. Finding waste in the wrong place is very easy.

In fact, since all human activities generate waste, all you must do to find dumping is to look where the humans are now or have been. Although in 2024 over 41 MILLION TONS of waste generated by Texans was properly disposed in landfills, not all of it made that far. A fair amount was dumped, usually for convenience or to save money. Once citizens receive just a minor orientation and know what to look for, they will cover up local officers with leads, if that's what you need.

The problem will always be in the relationship we take to these messes: Do we *turn away* or *find a way to effectively engage*? Notice that a community makes a COLLECTIVE choice about responding to dumping.

When it discovers illegal dumping, the community:

- (1) Can have effective enforcement and a clean place; or,
- (2) Can have the reasons why it doesn't have effective enforcement and a clean place.

Communities must decide which of these they want, and somewhere Captain Jack is watching.

4. Using the TCEQ Central Registry

Need to know what's going on in your community ... from the TCEQ's view? Use their Central Registry and look it up!

You can use the *TCEQ Central Registry Query - Regulated Entity Search* to look for TCEQ-regulated industries in your community and elsewhere in Texas. The large numbers of entities may surprise you.

By extracting the Central Registry information of entities in your city or county, you can easily add information and build your own, more detailed local enforcement contact files.

- The Central Registry currently contains information on over 425,000 entities in 73 unique programs requiring some level of licensing, registration, or permitting.
- But only 2,800 TCEQ people to oversee this activity.

Local governments have got to take the lead on most local criminal pollution cases, simply because they are closer to the problems and usually have more available resources. This is certainly true when it comes to illegal dumping.

TCEQ Central Registry is at <https://tinyurl.com/tidrc4>.

The regulated community in Texas is massive. Looking at the size of a few examples of the 73 unique programs: the used motor oil program currently has 3,903 active individual regulated entities; on-site sewer facilities show as having 26,240 active regulated entities, and so on. Three other large active programs are: Air New Source Permits (105,102); Stormwater (23,559); and Petroleum Storage Tank Registration (31,589).

The various **scrap tire regulatory programs**, by comparison, deal with 11,715 active entities, which is only the 9th largest program. Of these scrap tire records, around 11,000 are active registered scrap tire Generators (see *Chapter 11: Local Control of Scrap Tires*).

That little tire shop in your city that is accumulating hundreds of neighbors and the city crazy is hopefully one of the 11,000 entities holding an active TCEQ registration to operate as a scrap tire generator. If it has registered, at least someone will know of its existence, which can be a start toward better public health. However, if this particular shop is on the Registry or not, it is the kind of operations that are most likely to be controlled by local governments using a combination of municipal codes and state criminal laws.

You can also access the information in the TCEQ Central Registry by county or city.

Learning to use the TCEQ Central Registry and other tools based on the Central Registry, such as the Scrap Tire Active Registrations is a very good idea. Local officers often find they need a way to quickly determine the agency's relationship to an entity.

Need to know what's going on in your community from the TCEQ's view? Use their Central Registry and look it up!

5. A warning about Artificial Intelligence

There's a saying that *figures never lie, but liars figure*, which is a warning to not believe everything you read. Sometimes the errors are unintentional and sometimes made on purpose. I asked an AI program three questions, and here are the results:

#1 Question Asked:

Question 1: "What is the best way to stop illegal dumping in Texas?"

Artificial Intelligence Response

As an AI language model, I do not have personal beliefs or opinions, but here are some suggested ways to stop illegal dumping in Texas:

- 1. Increase Enforcement: Increase fines and penalties for illegal dumping and increase the enforcement of these laws.*
- 2. Public Education: Educate the public about the dangers of illegal dumping and the proper disposal of waste. This can be done through public service announcements, community events, and social media campaigns.*
- 3. Surveillance Cameras: install surveillance cameras in areas where illegal dumping is common. This can help catch dumpers in the act and discourage others from doing the same.*
- 4. Reward System: Implement a reward system for individuals who report illegal dumping. This can encourage people to report illegal dumping and help catch those responsible.*
- 5. Provide Convenient Disposal Options: Provide convenient and affordable disposal options for residents and businesses. This can include curbside pickup, drop-off locations, and recycling programs.*
- 6. Partner with Local Organizations: partner with local organizations, such as environmental groups and community organizations, to raise awareness about the issue and coordinate clean-up efforts.*
- 7. Increase Funding: Increase funding for waste management and enforcement efforts to assure that resources are available to address the issue.*

This is a pretty good strategy for any level of government to reduce the amount of dumping in a community. General, but not bad.

Question 2:

"Why isn't Texas doing more to stop illegal dumping?"

Artificial Intelligence Response

- 1. Limited Resources: Texas may have limited resources to address illegal dumping. This could include a lack of funding, staff, or equipment to effectively enforce anti-dumping laws and conduct clean-up efforts.*
- 2. Lack of Public Awareness: There may be a lack of public awareness about the dangers of illegal dumping and the proper disposal of waste. This can lead to a lack of reporting and enforcement of illegal dumping.*
- 3. Enforcement Challenges: Enforcing anti-dumping laws can be challenging, especially in rural areas where dumping may occur on private property. It may also be difficult to catch individual in the act of dumping.*

4. *Political Priorities: Illegal dumping may not be a high priority for Texas politicians or local leaders, who may be focused on other issues such as economic development or public safety.*

5. *Limited Collaboration: There may be limited different agencies and organizations responsible for addressing illegal dumping. This can lead to a lack of coordinated efforts and resources to effectively address the issue.*

Again, this is a reasonable generic response to a policy question about why an enforcement program is not going so well.

Satisfied with the answers to these generic policy questions, I then asked it for a question requiring detailed fact for a correct answer.

I imagined a newly elected councilperson or commissioner, happy with the answers she or he had received on the policy questions, then decided to see if local officers were using the full powers of state law to stop dumping. The official had found out from the prosecutor or someone else that the primary law to use was THSC Chapter 365, the Litter Abatement Act. So, the official asked the following question and received these incorrect answers:

Question 3:

“What is the content of the Texas Litter Abatement Act?”

Artificial Intelligence Response

1. *Prohibition of Littering: The Act prohibits the dumping, placing, throwing, discarding, or scattering of litter on any public or private property in Texas, including waterways, roads, roads, and highways.*

Our Comment: Leaves out “solid waste” and additional crimes as receiving and transporting solid waste or litter.

2. *Penalties for Violations: The Act imposes fines and penalties for littering violations, including fines of up to \$500 for individuals and up to \$2,000 for businesses, as well as community service requirements and imprisonment for repeat offenders.*

Incorrect penalties (especially maximums); community service required for ALL convictions; imprisonment can be for first conviction.

Individual fines to \$10,000 plus up to two years in jail; non-individuals can face fines of up to \$20,000 per violation, not \$2,000.

3. *Enforcement. The Act authorizes law enforcement officers to issue citations for littering violations and allows for the seizure of littering vehicles and equipment.*

Both citations and arrests possible; law on seizure of vehicles not practically usable; trucks used in dumping violations are impounded as evidence in many cases.

4. *Education and Awareness: The Act requires the development of public education and awareness programs to promote litter prevention and abatement, and it authorizes the use of litter abatement funds for these purposes.*

No such requirement for education programs exists in the Act.

5. Litter Abatement Programs. The Act Establishes a Litter Abatement Fund, which is used to support litter abatement programs and activities, litter collection and disposal, and public education campaigns.

No such fund is established by the Act.

6. Overall, the Texas Litter Abatement Act is a comprehensive law that aims to prevent and combat the problem of littering in Texas through education, enforcement, and community engagement.

The Litter Abatement Act only focuses on enforcement; excludes education and community involvement, unless you would include the court sentencing the violator to do 1 to 60 hours (as decided by the court) picking up litter or working in a recycling center as “community involvement.” AI missed this very important provision too.

There’s a saying that some folks are “*frequently wrong, but seldom in doubt.*” This will become more apparent than ever as AI spreads through our culture. And there’s the old joke about the question an unfaithful husband asks his wife when she confronts him with a photo of him and his girlfriend: “*What are you going to believe? My story or your lying eyes?*” This is going to become a real question as we are confronted with images that are a long way past having been photoshopped. Thank goodness that our culture’s primary way of greeting new information is with our own deep skepticism!

Artificial Intelligence, as these examples show, will have the effect of making a person look reasonable in their assertions about dealing with illegal dumping. But those assertions may simply be wrong.

There is no substitute for reading and rereading these often overlooked and unenforced laws themselves, now, before the use of Artificial Intelligence really gets chaotic.