

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

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

- (a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.
- (b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.
- (c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.**
- (d) A person using or permitting the use of land as a public dump shall provide ... Note: This section superseded by solid waste rules in 30 TAC 330.
- (e) person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

Sec. 341.012. ABATEMENT OF NUISANCE

- (a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.
- (b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. **The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.**
- (c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.
- (d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney: (1) shall immediately institute proceedings to abate the public health nuisance; or (2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Sec. 341.019. MOSQUITO CONTROL ON UNINHABITED RESIDENTIAL PROPERTY. (Continued)

- (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.

Sec. 341.091. CRIMINAL PENALTY.

- (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.
- (b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.
- (c) Each day of a continuing violation is a separate offense.

BIGGEST PROBLEM IN USING 341

1. Abatement process in Sec. 341.012 (b) - (d) doesn't work where the Local Health Authority is absent or not functioning.
2. Local Health Department usually abandons efforts to abate when resisted and issue a citation for possessing the PHN itself.
3. Municipal Judge / JP hearing the citation doesn't have the authority to order an abatement (that would have come through the abandoned abatement process).
4. This effectively leaves most of Texas without an abatement process for Public Health Nuisances.

Sec. 343.002. DEFINITIONS. (Selected)

- (2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (4) "Neighborhood" means:
- (A) a platted subdivision; or
 - (B) property contiguous to and within 300 feet of a platted subdivision.
- (5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.
- (8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.
- (9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (10) "Rubbish" means nondecayable waste from a public or private establishment or residence.
- (10-a) "Undeveloped land" means land in a natural, primitive state that lacks improvements, infrastructure, or utilities and that is located in an unincorporated area at least 5,000 feet outside the boundaries of a home-rule municipality.
- (11) "Weeds" means all rank and uncultivated vegetable growth or matter that:
- (A) has grown to more than 36 inches in height; or
 - (B) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

Some provisions of THSC Chapter 343 are surprisingly harsh (definitions; repeat offending)

Sec. 343.011. PUBLIC NUISANCE.

- (a) This section applies only to the unincorporated area of a county.
- (b) A person may not cause, permit, or allow a public nuisance under this section.
- (c) A public nuisance is:
- (1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
 - (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
 - (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;
 - (4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
 - (5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;
 - (6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched and locked gate; and
 - (B) a cover over the entire swimming pool that cannot be removed by a child;
 - (7) maintaining on any property in a neighborhood in a county with a population of more than 1.1 million a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or
 - (B) a cover over the entire swimming pool that cannot be removed by a child;
 - (8) maintaining a flea market in a manner that constitutes a fire hazard;

Use with THSC Chapter 341: Issue citation under Chap. 341; write required notice under Chap. 343 on the Chap 341 citation; Puts the JP on alert.

- (9) discarding refuse or creating a hazardous visual obstruction on:
 - (A) county-owned land; or
 - (B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;
- (10) discarding refuse on the smaller of:
 - (A) the area that spans 20 feet on each side of a utility line; or
 - (B) the actual span of the utility easement;
- (11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;
- (12) discarding refuse on property that is not authorized for that activity; or
- (13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.

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.

PROBLEMS / VALUES IN USING

Problem: Mandatory 30-day notice requires two trips before citation can be issued;

Problem: Confusion over location of violation easy to do;

Value: JP orders abatement;

Value: Each day is a separate offense

Sec. 365.011. DEFINITIONS. In this subchapter:(1) **"Approved solid waste site"** means:

- (A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;
- (B) a solid waste site licensed by a county under Chapter 361; or
- (C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(3) **"Commercial purpose"** means the purpose of economic gain.(4) **"Commercial vehicle"** means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.(5) **"Dispose"** and **"dump"** mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.(6) **"Litter"** means:

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

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

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

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

(9) **"Solid waste"** has the meaning assigned by Section 361.003. "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and **other discarded material**, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

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

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

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; or

(iv) post-use polymers or recoverable feedstocks processed through pyrolysis or gasification that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

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

Sec. 365.005. VENUE AND RECOVERY OF COSTS.

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

Sec. 365.012. ILLEGAL DUMPING: VIOLATIONS

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

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

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

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

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

Note: Vehicle forfeiture seldom happens. It requires (1) notification after first conviction; and, (2) ONLY applies to Class A misdemeanors per CCP Chap 59. Instead, impound the vehicle as evidence.

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

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

Near / In Water? Consider also using TWC Secs. 7.145 & 7.147

Class C Misdemeanor + Community Service

Request courts to follow Sec. 365.012(s) and assign 1 to 60 hours of community service picking up litter in addition to fines.

Use with THSC Chapter 341

Since virtually all dumping creates a Public Health Nuisance, file this charge along with Chapter 365

Sec. 365.012. VIOLATIONS (Continued)**Disposal on one's own land**

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

- (1) the litter or waste is generated on land the individual **owns**;
- (2) the litter or waste is not generated as a result of an activity related to a **commercial purpose**;
- (3) the disposal occurs on land the individual **owns**; **and**
- (4) the disposal is **not for a commercial purpose**.

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

Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES;

- (a) This subchapter does not apply to farmers:
- (1) in handling anything necessary to grow, handle, and care for livestock; or
 - (2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.
- (b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

Mandatory Community Service

Sec. 365.012 (s) *On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.*

(Note: This section specifies a **maximum of 60 hours community** service picking up litter or working in a recycling facility.)

This may be a good option for courts to use in situations where the defendant is indigent but has time to contribute to the community. "Litter" is as defined in THSC Chapter 365.

Penalties for Violating THSC Chapter 365**I. NOT done for a commercial purpose (i.e., "the purpose of economic gain")**

(a) Five pounds or less; OR, 5 gallons or less (Note: Officer uses <u>weight</u> or <u>volume</u> as appropriate)	Class C Misdemeanor (fine to \$500); if done by non-individual: fine to \$500 (PC Sec. 12.51)
(b) Over 5 but under 500 pounds; over 5 gallons but under 100 c.f.	Class B Misdemeanor (fine to \$2,000); if done by non-individual: fine to \$10,000 (PC Sec. 12.51)
(c) 500 pounds but under 1,000; 100 c.f. but < 200 c.f.	Class A Misdemeanor (fine to \$4,000); if done by non-individual: fine to \$10,000 (PC Sec. 12.51)
(d) 1,000 pounds or more; 200 cf. or more	State Jail Felony (fine to \$10,000 / 6 mos. to 2 years confinement); if done by non-individual: fine to \$20,000 (PC Sec. 12.51)

II. DONE for a commercial purpose (i.e., "the purpose of economic gain")

(a) Five pounds or less; OR, 5 gallons or less	Class C Misdemeanor (fine to \$500); if done by non-individual: fine to \$500 (PC Sec. 12.51)
(b) Over 5 but under 200 pounds; over 5 gallons but under 200 c.f.	Class A Misdemeanor (fine to \$4,000); if done by non-individual: fine to \$10,000 (PC Sec. 12.51)
(c) 200 pounds or more; 200 cf. or more	State Jail Felony (fine to \$10,000 / 6 mos. to 2 years confinement); if done by non-individual: fine to \$20,000 (PC Sec. 12.51)

III. Barrels / Drums dumped for any reason

(a) Any amount of waste in a closed drum or barrel	State Jail Felony (fine to \$10,000 / 6 mos. to 2 years confinement); if done by non-individual: fine to \$20,000 (PC Sec. 12.51)
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TWC Sec. 7.176. VIOLATIONS RELATING TO HANDLING OF USED OIL

A person commits an offense if the person:

1. Intentionally discharges used oil into a septic tank, sewer, water, or a water course unless it is concentrated at less than 15 parts per million at the point of entry;
2. Knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills; or,
3. Intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment.

Penalty: Fine \$1,000 to \$50,000; confinement to 5 yrs.

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

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

TWC Sec. 7.186. SEPARATE OFFENSES.

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

Felony Water Pollution**TWC Sec. 7.145. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE**

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

- (1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency; **or**
 - (2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.
- (b) Penalty for an individual; Fine \$1,000 to \$100,000 and/or confinement to 5 years or both.
- (c) Penalty for non-individual; Fine \$1,000 to \$250,000

Misdemeanor Water Pollution**TWC Sec. 7.147. UNAUTHORIZED DISCHARGE**

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

- (1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; **or**
 - (2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.
- (b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.
- (c) Penalty for an individual; Fine \$1,000 to \$50,000 and/or confinement to 1 year or both.
- (d) Penalty for non-individual; Fine \$1,000 to \$100,000

Definition of "Water"

TWC Sec. 26.001(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and **including the beds and banks of all watercourses and bodies of surface water**, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Hazardous Waste Violations

*The State of Texas uses the definitions of "hazardous waste" found in 40 CFR 261 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE. These definitions include certain specific waste chemicals, waste from certain processes, and wastes with certain characteristics, including **Ignitability**: flash point under 140°F.; **Corrosivity**: pH of ≤ 2.0; or pH of ≥ 12.0; **Reactivity**: Including reacting violently, forming a toxic gas, or forming a toxic substance when mixed with water; and, **Toxicity**: Containing one or more listed substances. It doesn't take much for a waste to be a "hazardous waste." Because of the amount of hazardous waste generated in Texas and the high costs of proper disposal, officers will absolutely encounter hazardous waste being transported, dumped, and stored illegally.*

TWC Sec. 7.162. VIOLATIONS RELATING TO HAZARDOUS WASTE

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

- (1) **transports**, or causes or allows to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits;
 - (2) **stores**, processes, exports, or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;
 - (3) – (8) *Cover various paperwork and failure to report violations and have their own punishment provisions.*
- (c) Offense under Subsection (a)(1) or (a)(2): Penalty for an individual; Fine \$1,000 to \$50,000 and/or confinement to 10 years or both.
- (d) Penalty for non-individual; Fine \$1,000 to \$250,000.

TWC Sec. 7.163. VIOLATIONS RELATING TO HAZARDOUS WASTE AND ENDANGERMENT includes essentially the same violations as TWC Sec. 7.162 with the added element of *placing another person in imminent danger of death or serious bodily injury*. Where an injury is involved in a hazardous waste consider charging Sec. 7.163 also.

Medical Waste Violations: Tattoo Equipment

TWC Sec. 7.164 through TWC Sec. 7.171 deal with various violations involving "medical waste" as defined at Section 361.003, Health and Safety Code. Note that waste from a "health care-related facility" includes waste from a "tattoo studio." Dumping tattoo equipment in a dumpster violates such provisions as "disposing" and "transporting for disposal" (\$1,000 to \$50,000 and/or one year confinement for each).

Lead-Acid Batteries**TWC Sec. 7.185. KNOWING OR INTENTIONAL UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES**

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

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

THSC Sec. 361.451. LAND DISPOSAL PROHIBITED

(a) No person may place a used lead-acid battery in mixed municipal solid waste nor discard or otherwise dispose of a lead-acid battery except by delivery to:

- (1) a battery retailer or wholesaler;
- (2) a secondary lead smelter; **or**
- (3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

General Chapter 7 Enforcement Guidelines**TWC Sec. 7.186. SEPARATE OFFENSES**

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

TWC Sec. 7.188. REPEAT OFFENSES

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

TWC Sec. 7.189. VENUE

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

- (1) the county in which the violation is alleged to have occurred;
- (2) the county where the defendant resides;
- (3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; **or**
- (4) Travis County.

TWC Sec. 7.201. DEFENSE EXCLUDED

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

Keep Reading

TWC Chapter 7 ENFORCEMENT was created by the State Legislature in 1996 to make the environmental laws easier to locate and use. **Subchapter E** contains around 50 criminal environmental statutes, including many that arise in everyday enforcement. So, Keep Reading!

Outdoor Burning Control Overview

There are five distinct ways local governments can control outdoor burning in Texas:

1. **Municipal Codes** for cities that have them (75%);
2. **County Burn Bans** under LGC 352.081;
3. **Local Emergency Declarations** under GC 418.004 and GC 418.108;
4. **Felony Illegal Burning** under TWC 7.182 and 7.183;
5. **Misdemeanor Illegal Burning** under TWC 7.177(5) for violation of the Texas Outdoor Burning Rule.

The TCEQ (Air Program) also enforces the Outdoor Burning Rule **administratively**; the TCEQ Environmental Crimes Unit also enforces criminal burning violations.

Municipal Code Violations**Controlled by Texas Health & Safety Code Sec. 382.113**

Cities may have municipal codes controlling outdoor burning inside the city limit, and these **must follow the state provisions**.

THSC Sec. 382.113. AUTHORITY OF MUNICIPALITIES.

(a) Subject to Section 381.002 [*sic., no such section exists*], a municipality has the powers and rights as are otherwise vested by law in the municipality to:

- (1) abate a nuisance; and
- (2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.

Local Emergency Declarations**GC Sec. 418.004. DEFINITIONS**

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, ... etc., etc.

GC Sec. 418.108. DECLARATION OF LOCAL DISASTER

(a) Except as provided by Subsection (e), the presiding officer of the governing body of a political subdivision may declare a local state of disaster.

(b) A declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision.

County Burn Bans During Drought**LGC Sec. 352.081**

(c) The commissioners court of a county by order may in all or part of the unincorporated area prohibit or restrict outdoor burning in general or outdoor burning of a particular substance of the county if:

- (1) drought conditions have been determined to exist as provided by Subsection (b); or
- (2) the commissioners court makes a finding that circumstances present in all or part of the unincorporated area create a public safety hazard that would be exacerbated by outdoor burning.

(d) An order adopted under this section must specify the period during which outdoor burning is prohibited or restricted. The period may not extend beyond the 90th day after the date the order is adopted. A commissioners court may adopt an order under this section that takes effect on the expiration of a previous order adopted under this section.

(f) This section does not apply to outdoor burning activities:

- (1) related to public health and safety that are authorized by the Texas Natural Resource Conservation Commission for:
 - (A) firefighter training;
 - (B) public utility, natural gas pipeline, or mining operations; or
 - (C) planting or harvesting of agriculture crops; or
- (2) that are conducted by a prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code.

(h) A person commits an offense if the person knowingly or intentionally violates a prohibition or restriction established by an order adopted under this section. An offense under this subsection is a Class C misdemeanor.

(d) A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans ...

(f) The county judge or the mayor of a municipality may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge or mayor if the county judge or mayor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(g) The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.

(h) In conflicts, the decisions of the County Judge prevail over that of the mayor.

Felony Illegal Burning - Reckless**TWC Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT**

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

Penalty:

Individual: \$1,000 to \$250,000; to 5 years confinement

Other than individual: \$2,000 to \$500,000

Felony Illegal Burning - Intentional / Knowing**TWC Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT**

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

Penalty:

Individual: \$2,000 to \$500,000; to 5 years confinement

Other than individual: \$5,000 to \$1,000,000

Misdemeanor Outdoor Burning

It is a special misdemeanor to violate the **Texas Outdoor Burning Rule** [30 TAC 111 Subchapter B]. Local law enforcement officers enforce criminal violations.

TWC Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT

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

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

The Texas Outdoor Burning Rule was adopted under Chapter 382 on September 3, 1996 (published in Texas Register on that date).

Penalty:

Individual: \$1,000 to \$50,000 and/or confinement to 180 days; Other than individual: \$1,000 to \$100,000

Note that there is a problem with the penalty for this violation. TWC Sec. 7.187(c) sets a C, B, and A Misdemeanor for an offense under TWC Sec. 382.018. However, this was drafted in error as there are no offenses given at that section.

Talk with your County Attorney before using.

A. DO NOTHING (Most Popular) 7**B. ABATEMENT BY OWNER BEFORE LOCAL GOVERNMENT INTERVENTION**

1. City resident follows codes without thinking;
2. Public Health Nuisances abated when possessor discovers them [THSC Sec. 341.012(a)];
3. Rural Public Nuisance Abated by Possessor before county gives notice [THSC Sec. 343.012 (a)(2)];
4. Resident properly disposes of waste without dumping.

C. ABATEMENT FACILITATED BY LOCAL GOVERNMENT

1. Regional Planning Commissions (COG's); Cities; Counties host community clean-up amnesty days;
2. Non-government voluntary clean-up programs

D. ABATEMENT REQUESTED BY LOCAL GOVERNMENT

1. Municipal codes are followed when resident is requested to do so by city;
2. Public Health Nuisance abated after notice from Local Health Authority [THSC Sec. 341.012 (b) – (d)];
3. Rural Public Nuisance abated by potential violator during the 30-day notice period [THSC Sec. 343.012 (a)(2)];
4. Illegally dumped material abated by violator when requested by officer; charges may or may not be filed for THSC Chapter 365 violation, depending on local policy.

E. ABATEMENT FORCED BY LOCAL GOVERNMENT

1. Abatement follows order of municipal court;
2. Public Health Nuisance abated through intervention of Local Health Authority [THSC Sec. 341.012 (b) – (d)];
3. Rural Public Nuisance abated following order by JP [THSC Sec. 343.012(e)]
4. Illegal Dumping – Mandatory community service time spent picking up litter [THSC Sec. 365.012(s)];
5. Illegal Dumping “Abatement through Enforcement”

The job's not done until the waste is abated

F. ABATEMENT DONE BY LOCAL GOVERNMENT

1. Supplemental Environmental Projects [TWC Sec. 7.176];
2. County precincts occasionally cleaning dumping on public lands as time and budget constraints allow;
3. Cities endlessly cleaning up behind dumpers using city staff or contractors (generally a bad policy);
4. Done by counties who have adopted and are using the process of rural forced abatement [THSC Sec. 343, Subchapter C].

ISSUES IN ABATEMENT

1. In working with violators, be sure to **require landfill receipts** evidencing proper disposal of the waste; otherwise, you may just be facilitating illegal dumping.
2. The best reason to use Chapter 343 where you can in rural areas is that THSC Sec. 343.012 (e) **requires** the court to order abatement upon conviction; THSC Chapter 341 takes a more complex, often ignored approach.
3. There is a very limited abatement of Sec. 341 Public Health Nuisances in Texas for these reasons:
 - a. THSC Sec. 341.012 (b) – (d) establishes a process for the forced abatement of Public Health Nuisances in Texas in situations where the Property Possessor has not voluntarily kept the property clean;
 - b. Where Local Health DEPARTMENTS operate, a Notice to Abate is issued; however, no copy of the notice goes to the prosecutor, as the process requires;
 - c. If the person responsible for the PHN responds to the Notice to Abate given by the Local Health DEPARTMENT, the waste is successfully removed;
 - d. However, where the Responsible Person does NOT abate the PHN as required by the Notice to Abate, the Local Health DEPARTMENT **usually ceases to follow the provisions** of THSC Sec. 341.012 (b) – (d) and issues a citation to the offender for being responsible for the PHN;
 - e. At no time is the local prosecutor advised as required by the process defined in the statute.
4. Where a Local Health DEPARTMENT has NOT been formed around the Local Health AUTHORITY, the process at THSC Sec. 341.012 (b) – (d) is simply ignored by the Local Health AUTHORITY and others.

5. Why the Local Health AUTHORITY fails to participate as the statute requires may be for several reasons:
 - a. Ignorance of the statutory requirements;
 - b. Doesn't want to train a County employee who is not a peace officer as a representative [THSC Sec. 121.003 (c)] to have the power to issue citations in rural areas;
 - c. Local Sheriff may resist the notion of a non-peace officer issuing citations for any reason, including PHN's and the Local Health AUTHORITY complies.
6. Whatever the reason for the non-participation of the Local Health AUTHORITY and the partial-participation of Local Health DEPARTMENTS, the result is multitudes of unabated Public Health Nuisances in Texas.

COUNTIES WITHOUT HEALTH DEPARTMENTS

Counties without a formally organized health department generally still have a Local Health Authority. Counties can appoint a county employee to represent that official in local enforcement:

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.
- (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.