

Chapter 5: Current Issues in Local Enforcement

This section is for local officials and others who need an update on current issues in the local enforcement process.

The purpose of this chapter is to provide a brief discussion of current important topics in illegal dumping and environmental enforcement. It will cover these broad topics:

1. Why doesn't the TCEQ handle illegal dumping complaints?
2. So why does nothing happen in some cases?
3. Remediation Through Enforcement
4. Using the TCEQ Central Registry

1. Why doesn't the TCEQ handle illegal dumping complaints?

Well, it DOES. It is in partnership with local communities, but sometimes the local communities don't realize state dumping policy and that they, not the state, have primary enforcement responsibility.

When the TCEQ handles an illegal dumping case itself, it almost always uses Administrative law – rather than Criminal law – in doing so.

Most illegal dumping complaints arise and are handled locally. Usually, when the TCEQ receives an illegal dumping complaint, they forward it to local government to be addressed. In most cases it makes sense to use criminal law to respond to dumping, and virtually all of the criminal law enforcement resources in the state are located in county sheriff's departments, constable offices, and city police departments.

The TCEQ has limited ability to respond to environmental crimes (only about a dozen *criminal investigators* in an agency of approximately 2,800 people). None of the TCEQ Environmental Crimes Unit ("ECU") staff are sworn law enforcement officers, although they are all expert in investigating alleged crimes. When arrests have to be made, the TCEQ ECU partners with their counter parts 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 went to the TCEQ predecessor agency to staff solid waste experts in their regional offices.

The related staff reallocations necessitated more of the illegal dumping enforcement work be passed to local governments. In January 1996 the state sent a letter to all county judges 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 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 operates as stated in 1996. Additionally some complaints are made to local government by the TCEQ itself.

As people changed over the twenty-five years since this policy decision was taken, few officers and elected officials 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.

This remains a good policy, however. 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 cases.

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

It also necessitates code enforcement officers learn the essentials of criminal environmental law so that they can better identify these violations where they arise. Additionally, it requires city management and local law enforcement also to learn these criminal laws and make the commitment to use them when needed.

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

2. So why does nothing happen in some cases?

Why is it that we can drive by the same illegal dumping or Public Health Nuisance day after day yet nothing is happening, 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 easiest to see?
- 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 hap-

pened.

- 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 has to indulge him?
- Is because officers have already attempted to respond to some 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 is politically connected, has died without apparent heirs, or has moved to another city or even out of state, so it has been impossible to bring pressure on him or even talk with him?
- 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 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 first two seem to be limited to big cities.
- Is it because officers and their managers simply ignore some parts of the city or county because of the race 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 kind 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?

- 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 IS IGNORED IN SOME PARTS OF OUR COMMUNITY!"

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.

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 each of the "real life" situations above. Is knowing the location of the dumping or Public Health Nuisance or other kind of pollution the problem? Or is there, instead, something not working exactly right in the response system?

THERE'S A SAYING FROM TWENTIETH CENTURY PHILOSOPHY: "OUR PROBLEM IS NEVER OUR SITUATION; THE PROBLEM IS ALWAYS THE RELATIONSHIP WE TAKE TO OUR SITUATION."

Once we're trained to recognize what we're looking at, we generally can find dumped solid waste and litter, situations of suspected water pollution, and dumped used motor oil, medical waste, hazardous waste, dumped lead-acid batteries, and so on.

Since all human activities generate waste, all you have to do to find some is to look where the humans are or have been. Once they receive just a minor orientation and knows that to look for, citizens will cover you up 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? A com-

munity makes a COLLECTIVE choice about 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 continue to have the illegal dumping.

Communities have to decide which of these they want.

3. Remediation through enforcement

Many thanks to Rickey George II out in Ector County for these thoughts. Rickey is Director of the Ector County Environmental Enforcement Program and also the County Emergency Management Coordinator, so his department is pretty busy and he doesn't have a lot of time to mess around with illegal dumpers. Rickey's team has to be efficient. From what I can see, the county has more than its fair share of older dump sites to be cleaned. They have been successful with using cameras to capture images of dumpers. When the pictures provide sufficient information, they can immediately proceed with a case. Where the violator's identity is unknown, they have had success in posting pictures on social media and asking help in identifying the person. Ex-girlfriends have been particularly helpful in this regard.

Here's how Rickey describes their successful environmental enforcement program:

Historically, the enforcement of state environmental laws in Ector County has been dismal, ineffective, sporadic, and unorganized. As a result, littering and the illegal dumping of garbage and scrap tires resulted in thousands of illegal dumpsites that present serious environmental and public health concerns for the residents of Ector County.

Ector County is home to probably the largest unincorporated community in the State of Texas: West Odessa, a sprawling unincorporated community having an "official" population of 23,000 in 2010, but realistically with a population closer to sixty-to-eighty thousand.

It is certainly the largest unincorporated community in Texas

with such a low level of public services: there is no city government, sanitary sewer system, police department, public water supply, or government trash service. This social dynamic has resulted in this portion of Ector County being overwhelmed with illegal dumping.

The only law enforcement for West Odessa is the county Sheriff's Office, which does not have the time or resources to devote to illegal dumping control. The Ector County Environmental Enforcement Unit was organized for this reason. Our objective is to improve the quality of life for the citizens of Ector County by aggressively enforcing state environmental laws.

One of the primary concerns of citizens is the remediation of illegal dumpsites. Cleaning up illegal dumpsites places a financial burden on the county; no one wants to see their tax dollars spent on cleaning up a criminal's act. Therefore, we have adopted a strategy to remediate these dumpsites at the violator's expense. We call our approach Remediation Through Enforcement.

When a violator is identified as the actor in a violation of Texas Health Safety Code 365.012, the following strategy is employed:

1. LEVERAGE - *An arrest warrant is obtained for the criminal violation. The violator is notified of the warrant and given instructions for obtaining a bond and surrendering to the county sheriff's office. This is a simple process that will take a few hours out the day for the violator and they are released the same day. We don't want them in jail because that's just taxpayers paying for their food and sometimes medical expenses, but we have to make the arrest for the leverage. If no arrest is made, the reality of seriousness is not emphasized to violator. Additionally, the investigator would have to constantly "babysit" the violator until he cleans his dump site. If an arrest is made and the violator refused to remediate or does not accept the offer of dismissal, the investigator simply files the case with prosecuting office and moves on.*

2. INCENTIVE - We explain to the violator that we will recommend their illegal dumping charges be dismissed if they remediate what they illegally dumped PLUS ten tons of illegally dumped scrap tires. We chose tires because we are one of the worse counties in the state for illegally dumped tires, but the negotiation could be to clean whatever a jurisdiction desires.

We explain the maximum penalties for the offense they are charged with (i.e., Class B = \$2,000.00 fine and/or 6 months in jail; Class A = \$4,000.00 fine and/or one year in jail; court costs; possible probation for a few years and probation fees; attorney fees; and so on).

Clearly they would never receive the maximum punishments, but educating them on the possibilities coupled with the inconvenience of court dates, attorney fees, being on probation, and having a criminal record, etc., has proven to be a motivating factor. Additionally we explain they will get their bond money back when the case is rejected or dismissed.

We explain their costs to remediate the ten tons is a lot less than the criminal justice process will likely cost them. But at the end of the day, it's simply an offer they can accept or reject. The beauty of this is that it sells itself!

3. DEADLINE - We explain they have until their first court appearance to accomplish the remediation for the dismissal. Without a deadline, most persons will procrastinate until the last minute. Most of our offenders, however, get the clean-up done within a week.

4. DOCUMENTATION – We require the violators to provide proof of legal disposal. This documentation ensures they completed the agreement.

5. DISMISSAL – Once they have completed the agreement, we contact the prosecuting office and request the case is rejected or dismissed. This has never been an issue as we have a great relationship with the prosecuting offices and,

honestly, it's just less work for them because their dockets are so full with other crimes.

6. PUBLIC SHAMING – *Although they cleanup, their booking image and images of them cleaning are posted on our Environmental Enforcement Unit's social media site. This has resulted in tremendous community support. Good guys like watching bad guys pick up trash, it's that simple.*

Our Remediation Through Enforcement paradigm has proved tremendously effective. Over 95% of all violators accept the offer of a dismissal though remediation. The county's contract to legally dispose of tires is \$282 a ton and about \$50 a ton for solid waste and litter. So that's a savings of about \$166 per ton average to dispose of illegally dumped waste by good citizens. That's just disposal cost alone, not including labor and fuel costs.

In the past eight months, the Ector County Enforcement Unit has successfully had VIOLATORS remediate over 1,100 tons of illegally dumped solid waste and litter from our County. That's over \$182,000 tax payers did not have to pay to have cleaned.

However, this doesn't work unless you follow this model; believe me, we have tried all sequences of working with the dumpers.

Relying on the regular criminal justice system will not improve the community; most of the fines levied by the system are already earmarked for everything but remediation. The state gets their cut; the county clerks and prosecuting office get reimbursed; the court costs are earmarked for funding courthouse security and many other things; and, the rest goes to the General Fund. None of it goes back to the community. With our approach, our citizens are the immediate beneficiaries. This works for us, and it probably will work for you too.

We encourage local officers to discuss this non-coercive approach with their prosecutors and see if this is a tactic that will work for you. Rickey's email address is RICKEY.GEORGEII@ectorcountytexas.gov.

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 may surprise you.

By extracting the Central 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 (June 2021) contains information on 878,870 entities in 73 unique programs requiring some level of licensing, registration, or permitting.
- Of these, 384,365 have a status of "Active," which is 44% of their entire data base; however, some of the other 495,000 can also constitute a demand on staff time in unusual circumstances.
- 384,365 active entities; 73 unique programs; only 2,800 TCEQ people.

Local governments have got to take the lead on most local 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/454wtkk2>.

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 3,897 active individual regulated entities; on-site sewer facilities shows as having 23,521 active regulated entities, and so on. The three largest active programs are: Air New Source Permits (101,508); Stormwater (33,495); and, Petroleum Storage Tank Registration (31,308) [figures in paragraph as of June 30, 2021].

The various **scrap tire regulatory programs**, by comparison, deal with 11,681 active entities, which is only the 9th largest program. Of

these, over 11,000 are active registered scrap tire generators (see Chapter 11).

That little tire shop in your city that is accumulating hundreds of scrap tires out back, allowing mosquitoes to prosper, and driving its 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 is a start toward better public health.

One of the anomalies of state law is that scrap tire GENERATORS are under no requirement to keep the TCEQ aware of the status or existence of their business or even where they are located, so many don't. Or perhaps those running the shop have never even heard of the TCEQ, and are just doing their own thing, unconstrained and unconcerned about the impact their waste is having on the community. However, those shops are simultaneously subject to State Criminal Law, Municipal or City Codes, and Administrative Laws like the rest of us. But, the demands on TCEQ staff being what they are (and the State of Texas being the size it is), chances are that the actual regulation of these small entities will come from the Local Health Authority and city and county law enforcement – or they will simply be ignored operating under the radar. Mosquitoes, rats, and other disease-spreading vermin prefer your community to ignore their homes and leave them alone.

Does it really make sense to complain to the TCEQ and criticize the agency for failing to show up immediately to enforce Administrative Law at that local tire shop, for instance for the owners failing to effectively control mosquitoes? Would you rather just fix the problem using State Criminal Laws and/or Municipal Codes or listen to baseless complaints that, “There is nothing we can do?” while wondering why “The TCEQ never shows up”?

True enough, the city can't directly enforce the Administrative Rule under which the shop is operating, and maybe attempts at code enforcement are going nowhere for some reason.

But why isn't the city or county immediately applying state criminal

law to fix this problem itself? THSC Sec. 341.013(c) seems made for this situation as is THSC Sec. 341.011(7). Both of those set a daily criminal fine for allowing mosquitoes to breed in water or waste. Both of those can be initially enforced in Municipal or JP Courts; both of these include greater daily fines and jail time for subsequent conviction within a year in County Courts. These are criminal laws; all the police or deputies have to do is go write the citation, and the process toward your community being healthier will have begun.

Moreover, if THSC Chapter 341 is properly used to control Public Health Nuisances, both of these violations provide a way for your Local Health Authority and local prosecutors to work with the violators to have them abate the Public Health Nuisance completely within a time period set by the Local Health Authority (see THSC Sec. 341.012). If the abatement fails to happen, the violator can be held in civil contempt and jailed until the nuisance is abated. If he asserts that he is indigent, that can be tested under oath in County or District Court by the Prosecutor.

More often than not, the actual reason that Public Health Nuisances linger in Texas is that the police, the Local Health Authority, and prosecutors are unaware of their powers and responsibilities to deal with these situations. The problem can be fixed a lot faster locally than waiting for the TCEQ to clear other complaints against tire shops and get to your case. And this do-it-yourself approach to community health is not limited to Public Health Nuisances at tire shops. It extends across every polluting activity in your city and county.

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

For example, in the City of Dallas there are around 8,400 active TCEQ-regulated organizations (across almost all of the 73 programs), and for Houston the count of active companies and individuals regulated by the TCEQ is currently right at 24,000.

If you wanted to pick a program for concentration – scrap tires, for instance – the addresses you need to make mailings to the regulated entities are right there in the Central Registry, waiting for your use. Pull down the Excel spreadsheet; extract the records you want; make mailing labels out of those; and you'll have finished the hard part.

Even my own little city of Tom Bean (population 1,082 up in Grayson County) has 36 entities that operate under some sort of TCEQ license, registration, or permit. These are the grocery store, the several filling stations, the ISD, several farms, the water supply district, trash haulers, and so on. So the next time you see a TCEQ truck driving in your community, why not ask them what they're up to? It will probably be something you never knew about.

However, probably what you wouldn't want to ask them is, "Say, as long as you're in town working on Petroleum Storage Tank Registration, would you mind dropping by 1401 Elm and cite them for illegal dumping?" Remember that the TCEQ staff are specialists: the PST expert is not necessarily also thoroughly knowledgeable about handling Municipal Solid Waste.

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. For instance, faced with a pile of several dozen scrap tires, local officers can quickly locate the scrap tire generators — at least those who registered with the state — in their city or county. If it's more than a few scrap tires that have been dumped, the regulated community is a good place to start.

We urge you to extract the scrap tire generators and haulers that operate in your city or county from the TCEQ list and make that the basis for your own local list of scrap tire generators — by adding the small businesses that are unknown to the state at this point. And when you do make a local addition or correction, let the folks at the TCEQ know about it so they can make the Central Records more accurate.

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