Illegal Dumping Enforcement

Officer's Guide

Texas 2022 Edition

Reading for class:
TIDRC008 Local Control of Scrap Tires

Chapter 11: Local Control of Scrap Tires

(Pages 198 – 227)

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Chapter 11: Local Control of Scrap Tires

Our future doesn't look good as far as scrap tires are concerned.

Over the next thirty years, Texans will generate around 1½ BILLION more scrap passenger car tires. This is based on the projected state population from the Texas Demographics Center and the estimate that each Texan will generate between 1 and 1.5 scrap tires in each of those 30 years.

There are currently no viable uses for anywhere close to this number of scrap tires in any known business application. Many of those that are not buried in landfills will be dumped.

As far as being a waste is concerned, scrap tires are about the best there is. Listed below are some of things that help make them the Most Outstanding Waste in Texas, now and for the foreseeable future. Hand's down, scrap tires are the Champion of Waste.

Because of the laxness of current state administrative rules governing scrap tires, cities should attempt to control them through more stringent local ordinances, a process allowed under state law. The following cities (at least) have created local ordinances to control scrap tires: Amarillo, Dallas, El Paso, Forney, Fort Worth, Gainesville, Grand Prairie, Harlingen, Huntsville, Laredo, Madisonville, Mineral Wells, Odessa, Pharr, and San Antonio. If your city is not on this list and you have a scrap tire ordinance, my apologies for having missed you. However, if you are missing from this list because you don't have a scrap tire ordinance yet, we encourage you to make this a priority.

The key to dealing effectively with scrap tires is to respond to the problem as early as possible. Whether you have just a few or a lot of scrap tires, work to resolve the issue quickly. Ignored, piles of scrap tires never decrease; they just grow. The First Iron Law of Waste takes over: "Left un-abated, piles of waste only grow."

A copy of the relevant sections of the state administrative rule for handling scrap tires, *30 Texas Administrative Code, Sections 328.51*

through 328.71, also titled *Subchapter F: Management of Used or Scrap Tires,* is in the appendix of this book for your reference.

Consider these basic facts about scrap tires:

1. There are a lot of them around already

In 2017, Texans generated somewhere between 28 MILLION and 42 MILLION scrap passenger car tires.

The most commonly used industry estimate of the number of scrap tires that are generated in Texas each year has been "one scrap tire per person per year." This is an estimate that has been used for years for the whole United States and was established by the U.S. Tire Manufacturers Association back in the 1970's. It is an estimate that is too low by half, relying on the data generated by the Waste Tire Program at TCEQ.

2. There are a lot more of them coming

Over the next 30 years, we will generate some where around 1.2 BILLION and 1.8 BILLION additional scrap tires in Texas.

Texas is anticipating having a population of 47,342,105 by 2050 (just 30 years away), according to state demographers. This is probably a good planning figure, although a friend who is a professor of biology and an expert on water resources generally laughs when I tell him the population growth estimate the state is predicting. "John," he tells me. "There's no where near enough water to support that size population in Texas. Not gonna happen." Well, I guess we shall see. But let's overlook his objection for now.

At current scrap tire generation rates, we should plan to see between 47,342,105 and 71,013,158 scrap tires in 2050 alone (applying the 1.0 and 1.5 multipliers to the population estimate for 2050).

Each year between 2020 and 2050 the population of Texas is predicted to steadily grow, generating millions of scrap tires each year along the way as a byproduct of living.

When you add up the scrap tires anticipated to be generated each year (using the official population estimates), over the next 30 years we will generate some where between 1.177 Billion and 1.776 Bil-

lion scrap tires in Texas (that is, 1,177,420,789 to 1,766,131,184 to be exact), but let's just say 1½ billion more scrap tires coming.

Admittedly, something might happen that would slow or stop the production and use of tires on vehicles. Those promised Jetson's flying cars could finally show up, for example, and tires would be replaced by something else, like the air used on hovercraft. Or we could run out of oil to be refined into gasoline and have to revert to walking, giving up our cars. Or maybe the tire manufacturers of the world will collectively decide that their product creates too much long-lasting waste, and just quit the business out of ethical concern. More likely we are going to learn again how short a time thirty years actually is and be swamped with scrap tires.

3. There is actually very little that's useful to do with them

Tires spend about 0.2% of their useful life on cars, and about 99.8% of their natural life as a bothersome waste, or as a fantastic home for mosquitoes, rats, and things that eat rats.

This assumes that a tire may be used on a passenger car for about a year, and then take 499 more years to naturally decompose back into the elements that make it up.

Of course, you can spend some money trying to make the waste tire less obnoxious, or even actually useful in small quantities.

Here's how we currently use a few of them:

Filling in previously existing big holes ("Land Reclamation Projects Using Tires," according to the TCEQ; "Burying Tire Pieces," according to others);

Turning them into crumb rubber and used as "TDF" — Tire Derived Fuel for cement manufacturing and paper pulping operations;

Burning whole tires as fuel. Some failing efforts have been made to do this, but so far too much pollution is produced for this to be as yet practical;

Using them to make such things as flooring for stock trailers and stalls; yard furniture; dog beds, painted flowerbeds, rings around trees, and so on;

Using them as padding under playground equipment, padding in artificial athletic fields and tracks, in septic fields, and as weights to hold down tarps;

Using them in road construction, including bank stabilization and mixed with asphalt in road surfaces (80% of rubberized asphalt is in California and (Arizona);

Cutting them in half or quarters and burying them in landfills.

But don't forget that we will probably generate around 1½ billion of them to deal with over the next thirty years in Texas alone, and these uses are not going to require many scrap tires in total. It is hard to see taxpayers spending a lot of money on processing that much waste, remembering the refusal of local voters to tax them selves to upgrade community "dumps" into "landfills" in the 1980's. Taxpayers simply don't like to spend tax dollars on improved waste handling.

4. Left alone, they will last for hundreds of years

Scrap Tire News reports that the average passenger tire — which the U.S. Tire Manufacturers Association says weighs 22.5 pounds — contains the following:

70 percent recoverable rubber (15.75 pounds)

15 percent steel (3.4 pounds)

3 percent fiber (about 1/2 pound)

12 percent extraneous material (e.g. inert fillers) (2.7 pounds)

I once asked a group of county commissioners this question: *"Left alone, how many years would it take a scrap tire to decompose back into its elements and just fade into the surroundings?"* One commissioner quickly shouted out, *"Six-hundred years!"* I asked him how he knew this, and he said, with conviction, the following. *"I don't actually have a clue, but I've learned over the years*

that if I'll answer a question with a firm assertion, people would continue to vote for me." Finally: an honest politician. In fact, we don't know the answer to this question because we've not been around long enough to see this phenomenon take place! Maybe the right answer IS "600 years," but we have no way of making this assertion yet. Maybe it's 1,000 years.

So I decided to change the question into an assertion and direct it to the participants our in-person classes. In the last couple of years, I have asserted to over 400 law and code enforcement officers in classes I have taught, at different places around the state, the following (designed to produce an argument): *"We are generating scrap tires today that, if left alone, will exit longer than the United States will continue to be a country."*

Frankly, I had anticipated some argument on this, which could have led to a good discussion on how we generate and deal with waste in our culture. Instead, all I have gotten in response to my provocation is a lot of nodding heads. Absolutely nobody disagrees.

The consensus seems to be that, left to themselves, scrap tires will in effect exist "forever."

It's pretty strange to depend on an item that we produce in the millions, that we will use less than 1% of, that we discard virtually immediately, that has almost no future value, and that will last virtually forever, generating public health nuisances where left open to nature. This seems like a clumsy way to solve the problem of providing a smooth ride, to me.

5. They are generated from over 11,000 separate locations around Texas

Every little tire shop in Texas generates scrap tires, so controlling them at their source is difficult. There are about 11,000 registered scrap tire generators, and many additional ones that are too small to be require registration (who generate fewer than 500 scrap tires).

Anywhere tires are handled commercially is a possible generator of scrap tires under state rules.

The TCEQ maintains the record of those entities that have actually registered with the state at www.tceq.texas.gov/tires/tires. Look on that page for a section named *Registered Scrap Tire Transporters and Management Facilities* and download the registration file there.

This TCEQ data is sortable and includes the address, city, and county of each entity. This means that you can use it to begin an inventory of generators in your own community.

On the date we examined this file (05/11/2021) here's what was there:

- Total entries in file: 12,622
- Registered Scrap Tire Generators: 12,026

  Current Texas state rules require registration as a generator when the business is storing more than 500 scrap tires [30 T.A.C. Sec. 328.56(a)(1)]

  The thousands of very small tire shops around the state that never reach the point of storing more than 500 scrap tires or who simply don't understand or comply the state requirement simply are not included in the 12,026 Registered Scrap Tire Generators.
- Registered Scrap Tire Transporters: 460
- Scrap Tire Storage: 17
- Registered Scrap Tire Storage/Processor/Recycler: 125
- Registered Scrap Tire Generator/Processors: 14
- Registered Scrap Tire Energy Recovery (cement companies): 10
- Registered Scrap Tire Land Reclamation Projects: 18

6. Problems With This Data

From the TCEQ 2019 Scrap Tire Annual Report Summary**:**

In 2019, the Scrap Tire Program mailed letters to registered scrap tire generators requesting the status of their scrap tire management activities. The responses were:

- *700 registered generators cancelled their registration;*
- *666 registered generators confirmed their business was still active and kept their registration active;*
- *142 registered generators confirmed their business was still active and requested an amendment to update registration information;*
- *Over 3,000 letters were returned; and*
- *Over 7,500 registered generators did not respond.*

Note the following about this information:

- This TCEQ report is produced every year following the receipt of information from the waste tire community in March;
- Over 95% of the registered entities in the TCEQ data base is made up of scrap tire generators;
- All categories of registered parties are required to annually update their records, with the exception of scrap tire generators, who have no requirement to periodically update their record;
- When TCEQ Waste Tire staff sent requests for information to the 12,000+ scrap tire generators in 2019, **87.3%** of those requests were never delivered or were not answered;
- The unverified nature of the generator data base is a major problem for local governments who would base investigations on this data;
- Consequently, counties and Regional Planning Commissions should undertake actions to insure the accuracy of this data in their jurisdiction and region.

7. Scrap tires are found everywhere

Their mobility may be the best thing about them, waste wise. Scrap tires are probably the easiest waste to handle easy: they are light (about 22 pounds each); easy to stack; easy to handle; easy to throw from the bed of a pick-up.

- Easy to handle, scrap tire are found literally everywhere:
  - Scrap tires, unless ground into crumb rubber and shredded steel, are highly portable. They can be easily handled in the dumping process. They are easy to move around;
  - Those not properly disposed or recycled are found in alleys; in fields; on vacant lots; inside and behind vacant houses; in creeks, rivers and lakes; in warehouses; behind buildings and in backyards; in ditches; in garages; in abandoned in storage lockers; at failed retail tire businesses; illegally buried in pits; in forests; in the desert; on the seashore; innocently lying beside the road; riding around in pickup beds; and, in a lot of other places;
  - They are found in singles, pairs, small piles, and large piles. Texas has 254 counties and around 1,210 cities and towns; they all have at least a few scrap tires that have been dumped by individuals, trash haulers, tire companies, and others wanting to get rid of them without paying;
  - Some scrap tires have been dumped so long that they can no longer be handled under THSC Chapter 365 for illegal dumping;
  - However, MOST scrap tires exposed to the elements and vermin are criminal Public Health Nuisances under THSC Sec. 341.013(c) at this time;
  - Wherever Texans can get to, we have left scrap tires … and we're still doing so.

8. <u>At least fifteen cities have adopted strong local scrap tire ordinances</u>
   At least Amarillo, Dallas, El Paso, Forney, Fort Worth, Gainesville, Grand Prairie, Harlingen, Huntsville, Laredo, Madisonville, Mineral Wells, Odessa, Pharr, and San Antonio have adopted strong ordinances. Others may also have done so.

The state administrative rule for handling scrap tires – 30 Texas Administrative Code, Sections 328.51 through 328.71, also titled *Subchapter F: Management of Used or Scrap Tires* – allows this to happen;

Any local municipal code a city creates can be even tougher than the state administrative rule. The authority to do this is located at Section 328.52:

> *30 TAC Sec. 328.52 (a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that* ***are as or more stringent than the regulations in this subchapter****. All persons or facilities regulated by this subchapter must comply with all applicable local ordinances that are not inconsistent with the regulations in this subchapter. A local ordinance is not inconsistent with this subchapter if a regulated person or facility can simultaneously comply with both the state and local requirements.*

Houston is a great example of a city with an effective local ordinance to control their generators and transporters.

- Some of the features of Houston's code:
  - Better definitions throughout;
  - No open-to-elements storage of any tire allowed by anyone, business or individuals;
  - Violations of the ordinance are declared to be a criminal nuisance by city;
  - $250 to $2,000 fine for each violation;
  - Each day can be a separate offense;
  - Nuisance abatement will be at the owner's expense;
  - All tires must be secured when unattended (i.e., locked–up overnight);
  - All tires for sale must be organized and segregated;
  - Annual Generator and Transporter registration required with the city;

- Theft must be reported within 5 days to the registration office, if the theft is reported to the police or not;
- Annual Generator Registration is about $100 per location;
- Annual Transporter Registration is about $200 for the first vehicle; around $50 for each additional vehicle;
- Registration and decals for vehicles are non-transferable;
- Only designated and trucks with decals may be used;
- Violation: Unregistered transporting over 5 tires on any hauling trip beginning or ending inside city limit;
- Violation: Generator using unregistered Transporter;
- Stringent recordkeeping and use of manifests required;
- Three-year retention of all records – must be kept available for immediate city inspection;
- Process defined to revoke Generator and Transporter registrations;
- State law used when applicable on offences

• Your ordinance could be even more strict if necessary

9. Scrap tires are the perfect location for Public Health Nuisances

It is a crime in Texas to allow the presence of a Public Health Nuisance on property you possess or to cause a Public Health Nuisance to exist anywhere. The penalty for conviction on the first offense can be a fine to $200 and court costs. *Each day of a continuing violation is a separate offense* [THSC Sec. 341.091(c)].

If a person offends again within a year of his most recent conviction, it is an arrestable offense, with a penalty upon second conviction of a fine to $1,000 and/or 30 days in jail.

• Although there are different kinds of Public Health Nuisances, the broadest definition is found in Texas Health and Safety Code Sec. 341.013(c):

THSC Sec. 341.013(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, ***used tires****, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water,* ***or the breeding of insects or rodents.***

Scrap tires provide great shelter and breeding places for rats, mosquitoes, ticks and other vectors. And since rats live in piles of tires, so do snakes, who enjoy the abundant food, trapped drinking water, cool shelter from the heat, and protection from the elements in winter.

Some of the diseases in Texas that are carried by our local mosquito vectors include encephalitis, malaria, dengue, chikungunya, Zika virus, and yellow fever. Some of these have no know cure.

- Destroying places where water can be trapped is an effective way of controlling the common backyard mosquito, *Aedes aegypti*, whose normal flight range is about 200 yards.
- Local application of state Public Health Nuisance criminal laws can be more effective at controlling scrap tires than state administrative rule.

  The state rule – at 30 T.A.C. Sec. 328.56 (d)(4) – addressing vector control is: *Tires stored outside shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.*

  Since the entire lifecycle of the most dangerous vector – mosquitoes – can be as short as eight to ten days, depending on the species, relying on the state rule requiring vector control – spraying – to happen every 14 days doesn't help much.

  The criminal Public Health Nuisance law takes a more aggressive stance. No matter the location, this is the require-

ment: *THSC Sec. 341.012(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.*

No matter what else a person is doing, unless he has permit from the state to do so, a person may not create or maintain a Public Health Nuisance on property he or she controls.

- In addition to having local police use THSC Section 341.013(c) to respond to Public Health Nuisances, cities may also adopt local scrap tire ordinances with stringent requirements. For example, a local ordinance may require spraying on an even more frequent schedule than the state rule's "*at least once every two weeks."*

10. <u>The governor seems not to want to help locals control scrap tires</u>

The Governor's Office vetoed an excellent bill – SB 570 – in 2017 that would have given cities and counties more criminal laws specifically to control scrap tires.

- The bill had passed by a vote of 20 to 11 in the Texas Senate and 114 to 30 in the Texas House.
- There has been no subsequent attempt to reintroduce it.
- The Governor's veto put the responsibility to protect residents from mosquito-borne diseases associated with scrap tires almost totally on local governments, who have had different choices of how to respond:
    - Continue to do nothing about controlling scrap tires;
    - Greatly increase public health nuisance education among residents, emphasizing the dangers of scrap tires;
    - Continue to control scrap tires with wider use of existing criminal law, such as THSC Chapter 365 for illegal dumping.

Since there is no specific criminal law to be used for scrap tires, officers should deal with tires in as simply being more litter or solid waste being disposed under THSC Chapter 365. In that law, part of the definition of litter includes the phrase *"discarded or worn-out manufactured materials and machinery including motor vehicles and parts of motor vehicles,* ***tires****, aircraft, farm implements …."* As far as illegal dumping is concerned, the difference between new, used, and scrap tires is irrelevant. It's a violation to discard tires of any kind in any unapproved location. If the tires — new, used, or scrap — are *"discarded or worn-out manufactured materials…"* then they are "litter" and subject to THSC Chapter 365.

Some cities have placed greater emphasis on abating the Public Health Nuisance created by scrap tires under THSC Chapter 341;

A few cities have developed, adopted, and enforced stringent new city ordinances to control scrap tires.

11. Scrap tires are extremely dangerous and their presence sends the wrong message to citizens

Scrap Tiers are a Fire Hazard: Should they catch on fire — from lightning, arson, as part of a grass fire, or in a structure fire — scrap tires are an extremely rich fuel. A passenger vehicle tire contains around 15,000 BTUs per pound, which is about 25% more energy than a pound of coal. So when tires catch on fire, there's a lot of energy to be released, and when they are in crumb form the fires are often particularly difficult to extinguish. Dumping water on these kinds of fires from a helicopter doesn't always help much. Moreover it can be difficult to get sufficient firefighting equipment into the remote areas where these fires often occur. The fumes emitted in these fires may be toxic (sulfuric acid, gaseous nitric acid, and other carcinogens) and extremely dangerous to firefighters; the water run-off may easily pollute creeks and other water; the post-fire residue may pollute the ground.

They Should be Included in Local Emergency Planning: Some city and county Emergency Management Plans have wisely included

large dumps of scrap tires in their Hazard Analysis and have included planned responses to possible major, long-burning fires associated with the tire dump. The continued presence of such large piles of scrap tires in a community certainly raise questions about the seriousness of local hazard mitigation activities. Scrap tire dump fires are an example of an intersection of a Natural Hazard (i.e., a wildfire or lightning strike) with a Technological Hazard (i.e., failed community waste removal system that results in large stockpiles of flammable waste), as discussed in DHS's CPG 201: Threat and Hazard Identification and Risk Assessment Guide, Second Edition. Large dumps of scrap tires should certainly be taken into account in local emergency response planning.

They Reduce the Value of Property: Wherever scrap tires are dumped, someone will eventually have to pay to have them properly disposed. If property has been used as an unregistered tire storage location or illegal dumping location, when the law finally catches up with the situation the abatement costs can be high, even more than the value of the land itself. Cities and counties simply must act early in scrap tire cases before cleanup becomes a real quandary: financially impossible to do AND politically impossible *not* to do.

They Reflect Weak Local Government: *Their presence angers citizens.* Not all scrap tires that are dumped are in remote areas. Often, especially in small numbers, they are found on vacant lots, behind failed retail stores, and other highly visible locations. There they become a source of citizen complaints to government and of citizen disgust when nothing happens to get them removed. Left scattered around poor neighborhoods, they convey the (often accurate) statement that the neighborhood is deteriorating, that people living there don't care, and that local government is following two public health standards: one for the rich and another for the poor. They can also be a very long-lasting waste: elected officials, health department employees, and environmental officers come and go, but piles of tires last.

They Invite More Illegal Dumping. Left unabated, piles of tires in the environment always grow. Some folks apparently think that a pile of tires marks the location of a semi-official authorized disposal site; others think "What a great idea! I never thought of dumping my tires there!" and add their three (or twenty) to the growing pile. But if piles of tires are not removed, they just get bigger.

Their Presence Shows Local Law Enforcement Is Probably Unknowledgeable. The very presence of small and large piles of scrap tires in a community shows confusion within police departments, sheriff departments, and prosecutors' offices about using existing state criminal anti-pollution felony and misdemeanor laws. We'll discuss the specific enforcement options below.

They Indict Local Health Departments. They also show the need for local full service health departments — of which we currently have around 150 in Texas — to better respond to the many locations where standing water might be permitting mosquito breeding. They especially show what happens when those same local health departments ignore the State Legislature's mandate [found at Texas Health and Safety Code Sec. 341.012(b)-(d)] to follow a uniform statewide process intended to abate public health nuisances from a community. Most public health authorities simply ignore this state law.

They Are Expensive to Abate. The millions of scrap tires not reaching the small re-use markets in Texas each year will eventually be moved to their resting place: either a Texas landfill (after being split, quartered, or shredded) or used as tire-derived-fuel or used in some other way. Some will be relocated to other dump sites — from the back yard to a county road — before eventually being properly used or disposed or left in illegally dumped piles. The price to clean scrap tires from a property and move them to their final destination always seems to be somewhere around $2.00 per tire, a price few generators want to pay. Moreover, the longer a tire resides in a dump, the dirtier and contaminated it usually becomes, and the greater the likelihood it will be landfilled rather than used

for some good thing. There are a limited number of sources to pay for abatement: (1) the illegal dumping or public health nuisance law violator, if they are properly pursued; (2) a property possessor who has either dumped tires on his own property or been dumped on by an unknown person; (3) local government; or, (4) taxpayers in situations that simply can't be ignored. Sometimes (but not often) there are small grant funds available or a local government may work through the TCEQ to create or access a Supplemental Environmental Project designed to fund abatement. Some volunteer labor groups can help collect scrap tires, but somebody must pay the actual transportation and disposal costs. Cities and counties that opt to do nothing may find that they have picked the most expensive way to react. Doing nothing – just leaving piles of scrap tires to grow – can shelter the vectors that increase disease, lower property values, destroy the beauty of the countryside, and convey to the next generation that their parents simply don't care about the health and prosperity of their communities. This seems like a costly thing to do.

The State Recycling Program Was a Flop. In the late-1990's the state tire "recycling" program amounted to paying to have whole scrap tires ground into crumb rubber — I remember that the state paid somewhere around $0.70 a tire for this service. Once a tire was ground into a crumb-and-shredded-steel mixture, it was considered "recycled." The processor sent the state some paperwork, and the state sent the processer a check. A study by what was then called the Rubber Manufacturers Association in 1998 (*Internalization of Scrap Tire Management Costs: A Review of the North American Experience*) pointed out that, *"As a result (of that grinding-is-recycling program), Texas saw virtually all of its 50 million stockpiled whole tires reduced to shreds. Unfortunately, most of them still remained stockpiled in their new form."* Using 22.5 pounds per tire, that's over a billion pounds of crumb rubber and shredded steel and nylon still mostly sitting around Texas. I personally have seen 100 million pounds of this shredded material in

an old airplane hanger near Corpus Christi, and there are certainly bigger piles of shredded rubber around the state. There were a number of criminal cases that came from the "recycling" program too; these were largely resolved by the paying of a civil penalty. Some folks quickly discovered that they didn't actually have to grind the tires into crumbs. Instead, they could just submit paperwork to the state attesting that they had done so. The state paid in either case. This led to the generation of multiple phony weight tickets used to document the arrival of 18-wheelers full of scrap tires at a "recycling" facility.

The notion of that session of the State Legislature was that *subsidizing the creation of piles of crumb rubber would result in so much available crumb rubber that industries would automatically spring up to produce things based on these inexpensive raw inputs.* As the continued piles of crumb suggests, this policy reflected a profound misunderstanding of capitalism, which shouldn't be all that surprising since the proposal came from a group predominantly made up of attorneys rather than business people.

The process of economic growth actually starts at the other end of things with the identification of an unsatisfied customer need. It turns out that there simply is not much consumer need for large volumes of rubber in any form other than as vehicle tires for a vehicle, especially after you get past using scrap tires as "tire derived fuel."

As a slight aside, let me say that I really miss Rick Perry these days, and wish he were still our Governor. But it's entirely possible that he had something to do with the state getting the economics of the scrap tire recycling business exactly backwards. Newsweek reported in July 2017 that then Director of Energy Department Perry made the same economics error in addressing coal miners, assure them that their jobs would come back if they just produced more coal. Perry is reported as saying, "Here's a little economics lesson: supply and demand. You put the supply out there and the demand will follow," according to Market Intelligence reporter Tay-

lor Kuykendall. You can read this at https://tinyurl.com/mj6dhsrn This caused a mini-uproar that included someone posting Perry's poor grade in Principles of Economics at A&M back in his college days. If simply producing a lot of some raw material – like ground scrap tires, coal, sand, Johnson grass, leaves, or bottle caps – was all it took for an industry based on these things to emerge, our high-waste-producing economy would be all set. It turns out, however, that things don't work like that. Just the opposite. Still, I miss Rick Perry and wish we had him back in the Governor's Mansion. I don't think he would have vetoed SB 570 in 2017.

Anti-Dumping Local Practices

So what should local governments do?

Scrap tire dumping — like illegal dumping in general — is absolutely outrunning local government enforcement efforts, and thanks to our prosperity and populations projections, dumping is likely to become an even bigger problem in the future.

The State Legislature has provided local governments many ways to deal with dumped tires — municipal codes, health nuisance laws, criminal laws — but slow local application of those tools has undermined local pollution control activities, including dealing with scrap tires and their fire and health risks. It would have been nice to have SB 570 adopted into law. That would have provided local governments with additional specific criminal statutes to use, but that was not to be. Local government will simply have to move ahead using the current scrap tire control processes that are available.

The TCEQ enforces state administrative law – *30 Texas Administrative Code, Sections 328.51 through 328.71* – to control the accumulation, movement, and disposal of scrap tires. However, using state criminal laws to control tire dumping is pretty much the problem of local government. It's important for cities and counties to (1) learn all the tools that are available for them to control scrap tires; (2) know the state administrative rules governing scrap tires well enough to report violations to the TCEQ; and, (3) develop sound local enforcement poli-

cies to deal with the public health risks, illegal dumping, and water pollution involving scrap tires. In addition to these steps, cities of all sizes should carefully consider the benefits of adopting and enforcing a scrap tire municipal code.

State Rules, Basic Issues, and Local Response

The TCEQ website does a really marvelous job, in my opinion, of explaining the rules concerning the handling and disposal of scrap tires (start reading at http://www.tceq.texas.gov/tires). Following the links from there will probably answer just about any question you might have about the duties under administrative law of generators, transporters, and those who would operate scrap tire storage sites.

Most of the problems that local governments have with scrap tires revolve around:

(1) scrap tire generators (a defined term in the regulations) creating a Public Health Nuisance by improperly storing scrap tires;

(2) generators illegally dumping large volumes of scrap tires;

(3) generators who must register as storage facilities (subject to more stringent requirements than generators) because they have drifted beyond the "500 scrap tires on the ground and/or 2,000 scrap tires on a trailer" generator limits; and,

(4) dumping small (and occasionally large) numbers of scrap tires, the dumping being done by generators or individuals.

Since so many of these issues begin with scrap tire generators, let's read the rule's basic provisions: http://www.tceq.texas.gov/tires:

- *"Generators" are tire dealers, junkyards, fleet operators, and others who generate scrap tires.*
- *Generators may not store more than **500 scrap tires on the ground**. Generators who register with the TCEQ **may store up to 2,000 additional tires in a trailer**. A state sales tax identification number is required for registration*
- *Generators must:*

- *Monitor tires stored outside, at least once every two weeks, to assure vector control.*
- *Stack, sort, classify, and arrange good reusable tires in an organized manner for sale.*
- *Document the removal of all scrap tires using manifests, work orders, invoices, or other records.*
- *Allow only registered scrap tire transporters to remove their scrap tires.*
- *Ensure that the transporter who collects the tires delivers them to an authorized facility.*
- *Still comply with all manifesting requirements if transporting their own scrap tires without registration.*

- *No state fees are required for scrap tire management. Generators may charge customers for disposal, or may include the cost in the price of the tires purchased. Fees for removal are negotiated between generators and transporters.*

Since your city or county is not the TCEQ, you'll not be able to directly enforce these state administrative rules governing scrap tires. That's the business of the TCEQ.

However, that is not to say that your city or county is not involved in the overall management of this waste, especially if you adopt an ordinance for this type of waste. For example:

1. The way the tires are being held by the generator may violate your new scrap tire city code;
2. The way that the tires are being held by the generator may constitute a Public Health Nuisance or a public nuisance (THSC Chapter 341 or 343);
3. The generator may be illegally dumping excess scrap tires (those in excess of the 500 on the ground and 2,000 in a trailer that the regulations allow). Keeping the excess on site would require very-expensive registration as a tire storage facility, so illegally dumping the excess someplace may seem to be a

good idea to the violator, especially in those parts of Texas where local officials don't enforce criminal anti-dumping laws. Depending on the quantity and location where the tires are dumped, multiple criminal laws may be violated. The most common of these are THSC Chapter 365 (setting a criminal penalty for the dumping based on the weight or volume of what is dumped) and Texas Water Code Sec. 7.145 and Sec. 7.147 (felony and major misdemeanor water pollution when dumping is done into or adjacent to water, including borrow ditches and dry creeks);

4. Individuals – not classified as "generators" – may be violating THSC Chapters 341, 343, and 365 and/or TWC Sections 7.145 and 7.147 on their own property, and themselves be subject to criminal penalties;
5. A generator may have gone out of business or otherwise abandoned a number of tires at his closed retail business. All of these have become scrap tires, since they are no longer being offered for sale. Treat this as illegal dumping under THSC Chapter 365;
6. A former scrap tire dumping site may be under a TCEQ clean-up order of some sort, but the person subject to the order may be (1) failing to comply with the order; (2) increasing the tires dumped without authority to do so; or, (3) creating a Public Health Nuisance by how he is handling the situation;
7. You may simply be dealing with an old pile of scrap tires that have never been discovered by the TCEQ. Often the ownership of the land where the tires are is a problem, and sometimes the dumping happened so long ago that the only effective options are (a) use TWC Sections 7.145 and 7.147 if the scrap tires are dumped in or adjacent to water; (b) use taxpayer money to pay for the cleanup; (c) push local officials, in turn, to pressure state representatives and senators to have the TCEQ commit to cleaning the site; or, (d) get use to having the tires and start planning how to fight the eventual fire;

8. However, regardless of the age or size of the pile of dumped scrap tires, they cannot be allowed to be a Public Health Nuisance, such as a breeding location for mosquitoes. THSC Sec. 341.013(c) can be particularly useful to local governments wanting to keep pressure on violators to properly dispose of the scrap tires.

These are the normal issues that arise when dealing with scrap tires. We suggest that the best response for local governments in these situations is:

1. Learn the state law and administrative rule completely.

Read and re-read the material on scrap tire storage, handling, and disposal on the TCEQ websites mentioned above. There is absolutely no substitute for really knowing the state rule and laws controlling this waste. If the person is operating outside of these regulatory limits, he is probably illegally dumping tires someplace; even if he is following the state rules, he may be violating a local code or state criminal health nuisance law in the process. Move against him for those violations.

The Administrative Rule

The rule promulgated by the TCEQ regulating scrap tires is found at *30 T.A.C. 328 Subchapter F Management of Used or Scrap Tires* (full copy at http://s.coop/1u3q3). The entire rule is 35 pages long, and the basic provisions of this rule are as follows:

Section 328.51. Purpose.

To establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

Section 328.52. Applicability.

(a) Local ordinances can be tougher.

(b) Rule applies to everybody handling scrap tires.

(c) Manifest systems usually required when moving tires.

(d) Non-passenger tires exempt from some processing rules.

Section 328.53. Definitions (several useful ones):

*(8) **Generator** - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.*

*(18) **Scrap tire** - A whole tire that can no longer be used for its original intended purpose. A whole used tire that can be used, reused or legally modified to be reused, for its original intended purpose is not a scrap tire.*

*(20) **Scrap tire storage site** - A registered facility where more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers. The term does not include a transportation facility or a scrap tire facility that stores on-site no more than a 30 calendar day supply of used or scrap tires or tire pieces.*

*(26) **Trailer** - For the purposes of this chapter only, an enclosed, portable and lockable container for the storage of less than 2,000 used or scrap tires. This may include a trailer, railcar, roll-off container, or dumpster.*

Section 328.54. General Requirements.

(a) Administrative penalties and/or civil penalties authorized.

***(b) No commingling with other scrap or waste** (or everything in the comingled pile become solid waste or litter, subject to THSC Chapter 365).*

(c) Limits on storage at landfills: 500 on the ground / 2,000 on trailer, once registered

(d) Operation of transportation vehicles.

Section 328.55. Registration Requirements.

General registration requirements, content, and process for registration as scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are included in this

section.

Section 328.56. Generator Requirements.

(a) Generators storing more than 500 tires need a registration number from the TCEQ

(b) Generators are responsible for using registered transporters

(c) Generators must use manifests or equivalent when moving scrap tires

(d) On-site storage by generators

Generator on-site storage limits: 500 on ground / 2,000 more in trailers

Storage over 500 requires storage registration to store 2,000 more

Good used tires for resale have to be separate from scrap tires and orderly

Monitoring for vectors required at least every two weeks

The Statute

THSC Chapter 361. Solid Waste Disposal Act

The basic law from which the above rule is derived is:

THSC Sec. 361.112 Storage, Transportation, and Disposal of Used or Scrap Tires:

(a) A person may not store more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the commission. This subsection does not apply to the storage, protection, or production of agricultural commodities.

(b) The commission may register a site to store more than 500 used or scrap tires.

(c) A person may not dispose of used or scrap tires in a facility that is not permitted by the commission for that purpose.

(d) The commission may issue a permit for a facility for the disposal of used or scrap tires.

(e) The commission by rule shall adopt application forms and procedures for the registration and permitting processes authorized under this section.

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception. The prohibition provided by this subsection regarding storage does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(g) The commission shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(i) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(j) The commission may, for good cause, revoke or amend a

permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 361.089.

(k) The commission may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

2. Know and use your local codes

If you are located inside a city, be sure to read any of your current city ordinances that address such things as refuse on a lot, illegal dumping, and retaining water that may become stagnant or places for possible mosquito breeding. These may be all you need to solve a problem. However, your city is also authorized to adopt its own scrap tire control ordinance.

3. Know our state environmental criminal laws

Know the public health nuisance (THSC Chapter 341), public nuisances (THSC Chapter 343) laws available to local peace officers to use in handling scrap tires or used tires being dumped or improperly stored. These laws can also be used by Local Health Departments established under THSC Sec. 121 where the commissioners' court has extended the power to issue citations to the health department when it was created. For tires dumped illegally either inside cities or anywhere in unincorporated areas, use THSC Chapter 365 enforced by local police. See *Chapter 10: Primary Illegal Dumping Enforcement* for a discussion of these provisions.

For use anywhere in the state

Common THSC Chapter 341 violations involving scrap tires (and some used tires):

THSC Sec. 341.011 (4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

THSC Sec. 341.011 (7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

THSC Sec. 341.011 (9) a place or condition harboring rats in a populous area;

THSC Sec. 341.011 (12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

THSC Sec. 341.013(a) Premises occupied or used as residences or for businesses or pleasure shall be kept in a sanitary condition.

THSC Sec. 341.013(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

THSC Sec. 341.013(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

THSC Sec. 341.016 A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition

known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

Section 341.019 Mosquito Control On Uninhabited Residential Property (a) Notwithstanding any other law, a municipality, county, or other local health authority may abate, without notice, a public health nuisance under Section 341.011(7) that: (1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and (2) is an immediate danger to the health, life, or safety of any person.

For use in unincorporated areas, not including locations excluded by THSC Sec. 343.012(d) or other limitations in a particular provision:

Note that the definitions of “refuse” and “rubbish” in this law both include scrap tires. “Neighborhoods” are platted subdivisions and contiguous land within 300 feet. “Premises” is defined as “all privately owned property.”

Note also that these THSC Chapter 343 violations all require a 30-day warning from the county before the violation is considered to have occurred.

Common THSC Chapter 343 violations involving scrap tires:

THSC Sec. 343.011(c) (1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

THSC Sec. 343.011(c) (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;

THSC Sec. 343.011(c) (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;

THSC Sec. 343.011(c) (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;

THSC Sec. 343.011(c) (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;

THSC Sec. 343.011(c) (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;

THSC Sec. 343.011(c) (12) discarding refuse on property that is not authorized for that activity.

A person who is storing, transporting, or disposing of scrap tires in complete accordance with THSC Sec. 361.112 or 30 T.A.C. Sec. 328 may nevertheless be doing so in such a manner as to be violating one or more provisions of THSC Chapters 341 and 343.

Persons who have illegally dumped scrap tires (THSC Chapter 365) or using them to pollute water (TWC Secs. 7.145 and 7.147) usually are also violating THSC Chapter 341 and/or THSC Chapter 343

and should be charged with these violations along with any other crimes.

Thus, a person operating a retail tire store and storing scrap tires in such a way that they can trap rain water and become an actual or potential location that is a breeding place for mosquitos and other insects is committing a Public Health Nuisance under several of these statutes.

4. Consider Using Rickey's Approach

Take a look at pages 89 – 92 for a description of how the officers out in Ector County have successfully dealt with old "orphan" piles of scrap tires by tying their cleanup to other criminal cases.

The things to remember with scrap tires are (1) act quickly when the accumulation of tires is small; (2) use municipal codes – current and new ones – as available; (3) get your police involved to enforce state criminal laws against public health nuisances and illegal dumping; and, (4) report all observed violations of state administrative rules to the TCEQ.

If you look the other way or be hesitant on aggressively using municipal codes and state criminal laws, don't be surprised if the scrap tire problem in your community grows. Those 1½ billion scrap tires headed our way over thee next 30 years have to go *somewhere*!