

# Illegal Dumping Enforcement

Officer's Guide

Texas 2022 Edition

Reading for class:  
TIDRC015 Current Topics in  
Local Environmental Enforcement

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## **WHAT I HOPE YOU'LL REMEMBER**

When you are finished with this particular class, I hope you'll ponder and remember a few new things about these five topics.

### **Topic #1: Using the TCEQ Central Registry**

The TCEQ is currently (November 2020) tracking 384,365 active entities across 73 unique TCEQ-regulated programs using 2,800 people. This certainly does not include the small tire repair shop that you suspect of occasionally dumping scrap tires (perhaps they have fewer than the 500 scrap tires on site that reaches minimum the registration threshold, or maybe they just didn't register). But you can quickly find out their status by accessing the TCEQ Central Registry. Use this as a base for your own local, more complete files.

### **Topic #2: Kinds of Enforcement**

There are six kinds of enforcement that can impact your city; but just four that can be used effectively in your city or county. You cannot use them all yourself, but knowing about these options can help you. It's usually the case that cities and counties are not using all of their options.

### **Topic 3: Enforcement Causes Change**

If you you were not trying to change the way a property looked, you wouldn't be contacting the customer. But if you're successful, your work causes change. Nobody likes to be forced to change, especially by some person from the government.

### **Topic #4: Dumping Is Discovered ... Now What?**

Just having information about where dumping is taking place is never enough to get it stopped and the site cleaned. There are all kinds of problems getting to a clean property and changed citizen behavior.

### **Topic #5: Pondering Code Enforcement**

Code enforcement is complex and creates a lot of stress ... stress on the customer and stress on the code officer (and her bosses). Learn better ways to take care of yourself. Here are a few new and recurring problems officers face.

If you have additional thoughts on any of these topics, I'd love to hear from you at [ockels@mac.com](mailto:ockels@mac.com).

## TOPIC #1: 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. Their large number may surprise you.

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

**THE CENTRAL REGISTRY CURRENTLY (NOVEMBER 2020) CONTAINS INFORMATION ON 862,458 ENTITIES IN 72 UNIQUE PROGRAMS REQUIRING SOME LEVEL OF LICENSING, REGISTRATION, OR PERMITTING.**

**384,365 active entities; 72 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.**

**Access the TCEQ Central Registry Search at <https://tinyurl.com/yyzo9nef>.**

The regulated community is massive. Looking at the size of a few examples of the 73 unique programs: the used motor oil program currently has 7,664 individual regulated entities; on-site sewer facilities shows as having 41,534 regulated entities, and so on. The three largest programs are: Stormwater (172,315); Air New Source Permits (119,819); and, Petroleum Storage Tank Registration (79,858). Most of these programs are growing, too!

The various **scrap tire regulatory programs**, by comparison, deal with around 12,609 entities, which is only the 14<sup>th</sup> largest program. Of these, 11,954 are active registered scrap tire generators.

*So 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 11,954 entities holding an active TCEQ registration to operate as a scrap tire generator. Or perhaps those running the shop never heard of the TCEQ and are just doing their own thing, unconstrained and unconcerned about the impact their waste is having on the community. Those shops are simultaneously subject to State Criminal Law,*

*Municipal or City Codes, and Administrative Laws ... like the rest of us.*

*Curiously, state law does NOT require scrap tire generators ... who ARE required to register when they reach the point of having 500 scrap tires on their premises ... to annually advise the TCEQ of their current status and location.*

*The staff in the TCEQ Scrap Tire Program are, to my way of thinking, the best folks in the agency: they are very serious about their work. So even though the scrap tire generators are not required to annually update their information, the staff decided to see if they could verify the over 12,000 (at that time) registered generators in the data base. So they sent requests for information to all 12,000 entities. The result was not that good: 87.3% of the registered generators had bad address in the data base that caused the post office to return the request or simply didn't respond to the TCEQ.*

*If you want to know if a particular entity is a scrap tire generator in our community, your best bet is to call or visit them yourself, and if you find an operation who appears to have over 500 scrap tires on the ground ... but are not shown in the data base ... please drop the program an email so they can make a correction.*

*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 your 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. But your city DOES have the authority to adopt its own Scrap Tire Ordinance, which can be even tougher than the state regulations.*

*But, even without a new local ordinance, why isn't the city 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.*

*Moreover, both of these violations also require the Local Health Authority and*

*some level of local Prosecutor (you have choices under the law) 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 person can be held in civil contempt and jailed until the nuisance is abated. If he is indigent, that can be tested under oath in County or District Court by the Prosecutor.*

*More often than not, the actual problem is that the police, the Local Health Authority, and prosecutor 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.*

**YOU CAN ACCESS THE INFORMATION IN THE TCEQ REGISTRY BY COUNTY OR CITY ALSO.**

For example there are 16,334 TCEQ-regulated organizations (across almost all of the 73 programs) with primary mailing address in the City of Dallas, and for Houston addresses the count is currently 45,390. Even my own little city of Tom Bean (population 1,082 up in Grayson County) has 37 entities that operate under some sort of license, registration, or permit. So the next time you see a TCEQ truck driving in your community, why not ask them what they're up to? It may well be that they are busy doing something you never knew was regulated. Live and learn.

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? My Chief of Police doesn't think that should be a crime."*

Learning to use the TCEQ Central Registry and other tools based on the Central Registry, such as the Scrap Tire Active Registrations (access through <https://tinyurl.com/y4ynmptw>), 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 hundred 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 begin your investigation.

And, of course, you can extract the scrap tire generators and haulers that operate in your city or county from the state data base and make that the start of your own local list

of scrap tire generators — by adding the small businesses that are unknown to the state at this point.

Using the TCEQ Central Registry will help you do a better enforcement job ... as well as help you educate your elected officials about the services your city and county are already receiving from the TCEQ.



Illegally Dumped Barrels — THSC Chapter 365 State Jail Felony  
Illegally Stored Hazardous Waste — TWC Sec. 7.162(a)(2) Felony  
Site was not on the TCEQ Central Registry

## TOPIC #2: KINDS OF ENFORCEMENT

### a) Locally Available Enforcement

There are several ways that local and state government can deal with pollution. Who can use each of these state enforcement mechanisms differs. Cities can simultaneously apply two of these (*Municipal or City Codes* and *State Criminal Laws*) through using their code enforcement and police departments. Cities not doing code enforcement can use their police department to enforce *State Criminal Laws* designed to reduce pollution to reach about the same result.

If yours is a smaller city that has no code enforcement and contracts with the Sheriff for law enforcement services, the deputies or constable can enforce *State Criminal Laws* against pollution inside the city limit.

Counties, none of whom have a municipal code department, can also use *State Criminal Laws* to keep a precinct or their entire county clean. River Authorities and other Special Districts with law enforcement powers can use *State Criminal Laws* in their jurisdictions.

#### 1) Municipal or City Codes

These are enforced by city councils, usually (but not necessarily) working through code enforcement officers registered with the Texas Department of Licensing and Regulations. Cities are authorized by state law to adopt codes that protect the health and safety of their citizens. The wording of the codes differs from city to city, but the intent to produce safe and healthy citizens is the same. Municipal Courts hear those violations and impose penalties when the person won't comply voluntarily.

#### 2) Local Health Authority

Cities and counties, being the closest to the people, have the primary responsibility to protect the public health.

*THSC Chapter 121 LOCAL PUBLIC HEALTH REORGANIZATION ACT  
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.*

In order to accomplish this, local governments may (i.e., but are not required to) establish a local health unit, a local health department, or a public health district. Each of these entities has the powers described in THSC Chapter 121.



Although their powers differ, each of these organizations is built around a physician who is defined in this law as being the “Local Health Authority” (appointed by the city council or commissioners court). He or she may serve more than one community (this is common in some sparsely populated parts of the state):

*Sec. 121.021. HEALTH AUTHORITY. A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.*

If a commissioners court or city council decides not to form some sort of formal health unit for their community, they may nevertheless appoint a Local Health Authority:

*THSC Sec. 121.028. APPOINTMENT OF HEALTH AUTHORITY.*

*(a) The governing body of a municipality or the commissioners court of a county that has not established a local health department or a public health district may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's or county's jurisdiction.*

THSC Chapter 121.024 DUTIES describes the Local Health Authority’s duties while he or she is in office. These primarily consist in being the link between local governments, citizen health, and the Texas Department of Health Services. While he or she is performing these duties the physician is a sworn state officer. Local Health Authorities have a wide range of detailed responsibilities, including such things as aiding the DSHS *in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction.* One of the specified duties includes:

*THSC Sec. 121.024 DUTIES*

*(c) (5) aiding the department in the enforcement of the following in the health authority's jurisdiction: (A) proper rules, requirements, and ordinances;*

This particular duty — to help DSHS in enforcing ordinances within the health authority’s jurisdiction — becomes particularly important in responding to Public Health Nuisances under THSC Sec. 341.012(b)-(d). This is the section of state law where the State Legislature specifically assigns the duty to the Local Health Authority to work with violators found to have a Public Health Nuisance on their property and local prosecutors to force the abatement of these nuisances.

Under current law, this is the ONLY process defined in state law for the forced abatement of Public Health Nuisances.

**HOWEVER, I HAVE BEEN ABLE TO LOCATE ONLY ONE LOCAL HEALTH AUTHORITY IN TEXAS WHO IS POSSIBLY FOLLOWING THIS STATUTE MANDATING FORCED ABATEMENT BY VIOLATORS.**

No entity other than the local health authority — and the courts who may become involved in hearing abatement cases — is authorized under state law to order an abatement.

To respond properly to Public Health Nuisances, two things have to take place:

(1) **Local Law Enforcement** issues a citation for these violations under THSC Chapter 341 with the penalties set in THSC Sec. 341.091, to be imposed by Municipal Court or a Justice Court, depending where the violation took place. Notice that under THSC Chapter 341 neither of these two courts is authorized to order the abatement;

(2) The **Local Health Authority**, through an organization that has been created around the physician *or* a county employee operating under THSC Sec. 121.003, works with the violator **and a local prosecutor** to force the abatement of the Public Health Nuisance as described in THSC Sec. 341.012(b)-(d).

Many municipal code violations are ALSO Public Health Nuisance violations under THSC Chapter 341. So if a code officer is unsuccessful in convincing a citizen to bring his or her property into compliance, one option is, at some point, to have local police step in and issue a citation as described under (1) immediately above. Done properly, a conviction for that violation should then trigger the actions of the Local Health Authority to enforce the provisions of THSC Sec. 341.012(b)-(d).

**ONE OF THE REASONS THAT THERE ARE SO MANY UNABATED PUBLIC HEALTH NUISANCES IN TEXAS IS BECAUSE LOCAL HEALTH AUTHORITIES ARE NOT YET KNOWLEDGEABLE OF THEIR BASIC RESPONSIBILITY TO WORK WITH OFFENDERS AND PROSECUTORS TO THESE PROBLEMS.**

### 3) **State Criminal Laws**

These are laws created by the State Legislature to respond to crimes and have specific punishment categories; some cover the entire state and a few are only applicable in specific locations (such as in unincorporated areas). A city or county does not have to adopt these laws for them to be in force in that jurisdiction, nor can a city or county “opt out” of a criminal law being applicable. Criminal laws are

chiefly found in the *State Penal Code*, but are also found in such places as the *Health and Safety Code*, the *Transportation Code*, and the *Agriculture Code*. The criminal provisions of these laws are enforced by certified law enforcement officers (regulated by TCOLE) and prosecuted by County and District Attorneys. Some counties use specially trained Environmental Enforcement Officers, but this is not a legal requirement, and there is no currently recognized TCOLE specialization for this type of officer. Other counties use Fire Marshals holding TCOLE certification (not all of them do) to do criminal environmental enforcement; these folks have advanced knowledge of dealing with dangerous chemical wastes. Like all other criminal cases, alleged violations are heard in Justice Courts, County Courts, and District Courts, depending on the severity of the violation.

#### 4) **State Administrative Codes (Rules)**

Local code, police officers, and deputies may NOT directly enforce these. However, in some cases a local code has been adopted that closely follows a state administrative rule, and code officers enforce these as normal municipal codes. An example is:

*Administrative Rule Section 328.51-328.72 is enforced by TCEQ staff to control scrap tires in Texas. Local code and law enforcement officers cannot enforce this rule directly. However, about twenty cities have adopted their own municipal code that is based on Administrative Rule Section 328.51 – 328.71. In this example, the underlying Rule authorizes a city to adopt a code that is actually more strict than the Rule itself (see Section 328.52).*

These rules are found in the various titles of the State Administrative Code, with most rules to regulating how a person is to relate to their environment being in Title 30 ENVIRONMENTAL QUALITY. Sometimes you'll hear these rules referred to as being "TCEQ Rules," but that's an error. These are actually administrative rules of the State of Texas; the TCEQ simply has the primary job of enforcing them. When they are created all Texans have a chance to comment and help shape them, and you can follow their proposal, modification, and final adoption in the Texas Register (published online on Fridays at <https://tinyurl.com/y5wu7kfr>).

There are currently about 100 of these administrative rules that protect our land, air, and water resources, and hundreds of other rules pertaining to other laws in Texas. Examples of environmental rules from Title 30 are *Chapter 285 ONSITE SEWAGE FACILITIES*; *Chapter 290 PUBLIC DRINKING WATER*; *Chapter 324 USED OIL STANDARDS*, and so on. Generally these rules are the details of how

state laws are to be applied in specific situations. The State Legislature, for instance, directed the TCEQ to create rules protecting air quality in Texas that are consistent with Federal law and rules. The TCEQ then went through a “rule-making” process to create 30 TAC Chapter 111 CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER. Developing this level of detail was simply too much for the State Legislature to undertake on its own, without the benefit of air experts (and they all work at the TCEQ).

Likewise, the enforcement these rules is usually a complex, technical matter, so such administrative enforcement is delegated to the various state agencies having the subject matter expertise. When a rule violation cannot be resolved, the dispute is heard in an Administrative Law Court.

You can read more about how this court at the Texas Office of Administrative Hearings web site (<http://www.soah.texas.gov/>). Cities may find themselves as a party in an administrative law hearing, but only state agencies and the Attorney General’s Office can instigate a case. Even though a city or county cannot directly apply the Texas Administrative Code, the rules detailed there may be useful in other ways. They provide a great deal of technical insight and agreed definitions on a subject, for example, and may signal the thresholds at which a state agency — like the TCEQ — will become active in a situation.

So even though cities and counties cannot directly enforce these administrative rules, it’s still a great idea to know generally what’s in them. **They also usually contain definitions that are used in enforcing criminal laws in that medium.**

For example, the meaning of words such as “water,” “waste,” and “pollutant” that are used in Texas Water Code Sec. 7.145 to define and set the penalties for felony water pollution are all found in TWC Chapter 26 WATER QUALITY CONTROL.

If you’re needing definitions of the terms used in illegal dumping enforcement under THSC Chapter 365, take a look at THSC Chapter 361 SOLID WASTE DISPOSAL ACT.

For illegal outdoor burning definitions look at THSC Chapter 328 CLEAN AIR ACT.

Definitions used in THSC Chapters 341 and 343 — which deal with *Public Health Nuisances* and rural *Public Nuisances* respectively — are found at the front of both of those acts themselves.

## 5) State Civil Laws

Some laws — often as a subsection of a criminal law — allow for civil remedies

of some sort. For instance, the primary criminal law used for Public Health Nuisance enforcement contains a subsection specifying the procedures a Local Health Authority is to follow in forcing a violator to abate his Public Health Nuisance (THSC Sec. 341.012). Another criminal law contains provisions allowing for county (or a person affected by a violation) to enjoin the violator to force compliance (THSC Sec. 343.013). Enforcement of these civil laws are limited to certain individuals by the particular statute. The resulting cases may be heard at any level of court, from Municipal and Justice Courts to District Courts. These civil enforcement provisions are often unknown or simply not used.

## 6) Occasional Civil Suits

The state can sue polluters for any number of violations, including those detailed in the various chapters of the State Administrative Code. Additionally, there are often civil suit provisions in other laws.

For instance the Railroad Commission of Texas, applying their civil powers, may sue a person for *filing false reports with the agency under its powers at Natural Resources Code Section 91.143*.

In the recent past, Texas cities and counties could also bring lawsuits against polluters under the provisions of Texas Water Code Sec. 7.351 CIVIL SUITS. But successful suits by cities and counties against businesses that pollute have produced restrictions on some well-connected businesses. So, over the last several sessions, the State Legislature has weakened the *civil suits by governments* provisions to the point that they have become of little value to most local governments..

This may well have been a strategic error by the Legislature: a city or county, which in past had a good avenue to force compliance on a violator through a *civil suit*, may now be forced to using *criminal violations* against that offender. It's hard to see how the interests of business has been advanced by essentially eliminating the use of civil suits by local governments. When they do happen, these suits are heard in County or District Courts, depending on the value of the suit.

Periodically some Representative or Senator will begin legislation that would also take the powers to bring criminal environmental cases away from cities and counties, and vest the power to bring these cases exclusively with the Office of the Attorney General. Between cities and counties wanting to retain primary control over criminal justice in their jurisdiction — and someone smart enough in the Attorney General's Office to correctly anticipate the tsunami of local dumping

and other environmental criminal cases that would flow their way (along with widespread public outcry at slow enforcement) — this desire to push enforcement off onto an inadequate state system is regularly rebuffed. Criminal enforcement remains primarily a local function.

### b) Lack of Knowledge Is a Continuing Problem

The underlying problem with this, however, is that few local government staff are formally trained in using the full range of enforcement options provided by the State. Moreover, with each public election some level of knowledge is lost as those commissioners and councilpersons who support these programs are replaced by newcomers. This material is simply not included in the professional training most local government employees take early in their careers. So learning to use these laws is a “new” area for everybody, even though some of these laws have been available for well over thirty years.

Some specifics:

- **Code enforcement officers** — do not study criminal environmental options in their four-day basic code enforcement certification school (so most code enforcement officers, while perhaps expert in their local municipal codes, often simply can’t recognize when they are dealing with an environmental crime and, therefore, do not know when to get law enforcement involved). In other cases, code enforcement officers may think they are allowed to enforce TCEQ Administrative Rules along with city codes, when what they are actually enforcing is city code only ... SOME of which are based on State Administrative Rules that only the TCEQ can directly enforce;
- **Peace officers** — from city police to sheriffs and deputies to elected constables — do not study these criminal laws in the basic police academies. Consequently, these officers suffer problem in recognizing and knowing how to respond to various criminal violations involving pollution. Peace officers also are missing a great opportunity to cite environmental criminal law violations as probable cause for search warrants to gain property entrance in other cases;
- **Local Health Authorities** — these are the sworn state officials appointed by city counsels and commissioners courts to interface with the Department of State Health Services, the CDC and others to keep the people in the community healthy. Their duties, described in THSC Chapter 121 LOCAL PUBLIC HEALTH REORGANIZATION ACT include enforcing various health ordinances in their

jurisdiction. This includes enforcing THSC Sec. 341.012(b)-(d), which mandates actions by the local health authority to force the abatement of Public Health Nuisances in their jurisdiction. This rarely takes place in the way mandated by the State Legislature, with the consequence that Public Health Nuisances often persist in Texas much longer than necessary. Very likely this is simply because Local Health Authorities are unaware of this specific law;

- **Prosecutors and city/county attorneys** — don't learn this material in Texas law schools or in their professional training either. New prosecutors, unaware of these criminal laws, will occasionally actually refuse to recognize their existence, but most, once they read the law themselves, are open to incorporating them in their efforts to protect citizens. Local government attorneys working on civil matters, both staff and hired outside municipal attorneys — who are perfectly aware of other Texas laws and give competent advice to cities and counties on other matters — may easily find themselves providing inaccurate information when it comes to enforcement options available to local governments in anti-pollution cases;
- **Judges** — from JPs and Municipal Court Judges to Constitutional County Court Judges (i.e., the elected County Judge heading the Commissioners Court) to County Court at Law Judges to Criminal District Judges — seldom study these violations in their training either. Many JPs have been incorrectly presented with cases that were major misdemeanors or even felonies and were unable to recognize the error and direct the case to the proper court. Handling a major misdemeanor or a felony as a Class C violation is seldom an effective deterrent to repeated violations by the offender;
- **Other elected officials** — mayors, city council members, commissioners — don't study this material in their professional training. Consequently elected officials often just don't have accurate information when developing effective local policies and political responses to voters. This can cause good local enforcement programs to founder when tough economic times cause tax revenues to decrease.
- **Community activists** — The academics, service club members, and concerned residents of a community certainly do not know what constitutes a criminal pollution violation in Texas and may not know their local codes that well either. They *do* however, know the phone numbers of their local elected officials, and they *do* have time to overwhelm the system with demands for sufficient basic

enforcement to keep their communities clean and healthy. Note that technology is helping immensely in the education process of this community activists: municipal codes and state criminal laws are instantly available online. Making this material so readily available has helped this group of citizens know what they are specifically talking about, and what the city council has instructed the code enforcement and other departments of the city to undertake.

*I'll never forget traveling through Buffalo, New York, a few years ago. A mayor had been elected on a platform of "5 in 5," which was his commitment to tear down 5,000 derelict residential structures in the city in 5 years. He won the election, but in the process of performing on this pledge, things got a little bogged down.*

*The city found itself owning hundreds of derelict houses that were scheduled for eventual demolition. But things were going too slowly in the actual demolition process. Consequently the city had become the primary owner of properties that were not in compliance with its own municipal codes.*

*The folks who continued to live in other nearby properties were very mad; the city's inability (unwillingness?) to keep its own recently-acquired properties compliant with city codes was lowering the property values for everybody. Moreover, the city's slow action in demolishing properties it owned itself was making it impossible for the Buffalo code enforcement department to hold any other resident accountable for their own violations. "Why don't you city guys clean-up your own mess before you come complaining about my home?" That's a very good question, actually.*

*What all this produced was the most organized public protests at city hall and the best, most-professionally printed set of protest signs you could imagine. These signs reflected the seriousness of purpose of the residents who were intent on keeping the city on target to getting the derelict properties demolished. If a city ignores a problem affecting citizens, all that happens is that the citizens become more serious, and their numbers generally increase.*

- **Local pastors** — Don't overlook these folks. Virtually every major religious group has a formal statement calling for its adherents to work to keep God's creation clean. These include such documents as Pope Francis' encyclical *Laudato Si: On Care for Our Common Home* (<https://tinyurl.com/hxyjyno>), and *A Southern Baptist Declaration on the Environment and Climate Change*, by a group of Southern Baptist leaders (<https://tinyurl.com/y3hjrxf>), and the *Islamic Declaration on Global Climate Change* (<https://tinyurl.com/y4pppyl3>).



The notion in all of these is that the earth has been provided to humans to use and enjoy, but this is no longer seen as it having been given to us to ransack and thoughtlessly consume. Now the critical importance of correct stewardship is being defined as a spiritual issue in every religion and denomination I can find. Consequently, if a city, for instance, decided to ignore the presence of Public Health Nuisances in a particular area of the city — which is inevitably a sector occupied by the poor, who are too often also people of color — the management of that city can reasonably expect to have sermons preached against its indifference.

One city manager asked me if I had any ideas on how to deal with two preachers who were fighting with each other over local code enforcement:

*“What do you do about dueling preachers?”*

*“Excuse me?”*

*“We’re pressuring a guy to cleanup his ratty property, and he’s big in his church. Now he’s got his preacher calling everybody here at City Hall complaining about how unfairly we’re treating him by wanting him to follow the law. At the same time another preacher over there is pressuring us to cleanup the entire neighborhood around this guy’s property. He thinks we’ve backed off because the first preacher is calling everybody, so now he’s calling everybody at City Hall himself. These guys are rivals. I’m told they are preaching sermons against each other. What do you do about that?”*

*“Retire?”* (Unfortunately, another actual conversation)

What this general lack of knowledge and application can result in is pretty obvious: poor enforcement policy decisions, most likely dirtier and less-healthy communities, and needlessly upset voters (and occasionally upset preachers).

Sometimes this coordinated lack of knowledge coagulates as “agreed ignorance.” This arises where literally all local government leaders in a city or county *incorrectly* agree that “There is simply nothing we can do!” about a particular local mess. Usually, however, there is plenty that can be done, if local leaders are willing to learn and use their options. I’ve been looking at these local problems in Texas for a couple of decades now, and my conclusion is this:

**THERE ARE NEARLY ALWAYS SEVERAL UNTRIED APPROACHES AVAILABLE TO LOCAL GOVERNMENTS TO DEAL WITH DUMPING AND OTHER KINDS OF POLLUTION. WHAT’S USUALLY MISSING ARE THE KNOWLEDGE AND THE CONFIDENCE TO TRY SOMETHING NEW.**

### c) Enforcement Generally Falls on Local Communities

It's important to emphasize that keeping your community free of pollution is largely a local responsibility. We'll keep on harping on that topic in everything we do.

**MOST ENVIRONMENTAL CRIMES NOT DEALT WITH BY LOCAL LAW ENFORCEMENT WILL NOT BE DEALT WITH BY ANYONE AT ALL. THEY WILL SIMPLY LAY THERE UNTIL THEY DISAPPEAR UNDER THE WEEDS OR DETERIORATE AND MELT BACK INTO THE EARTH.**

Texas is simply too large a place — and state resources are simply too limited — to expect the Texas Commission on Environmental Quality to keep everywhere clean and healthy. That responsibility clearly primarily falls on the shoulders of local governments.

By itself, the TCEQ cannot reasonably be expected to tackle the job of keeping Texas' 254 counties, 1,210 cities, and nearly 3,500 Special Purpose Districts clean by themselves ... “protected” from almost 400,000 known possible sources of pollution (and that's just the officially regulated community, and not including about our 30 million private citizens too).

“But,” you might be thinking, “code enforcement officers cannot enforce state criminal laws, so why learn any more about them than we already know?” The answer is pretty clear, to me at least. Code enforcement officers know the location of just about every violation that is going on in neighborhoods they work. They are much more likely to spot dumping or some other violation than any other city employee — once they know what actions and situations are breaking which state criminal laws.

Often in classroom settings I have seen officers — sometimes code officers and sometimes police — often begin private conversations even while instruction is still going on. People will be starting to talk among themselves, which is always a good sign. It used to irritate me when several private conversations would start, before I wised up. When asked later what they were discussing so earnestly, officers will invariably say they were talking about applying something they had just learned to some long-standing local problem that they had been trying to solve. Several times we have had police officers leave the class — sometimes over lunch and occasionally during an instructional period — to go make an arrest using laws they had literally just learned. This proves a point: these laws are *very* practical and designed to be used.

Inside a city, chances are it will be a code enforcement officer who first sees a problem. So they need to be highly trained individuals who *really* know state anti-pollution laws. I have also found that of all city employees, code officers and registered

sanitarians are the most aware of the consequences to community health, property values, and beauty of failing to use these state criminal laws ... *in addition* to undertaking sound municipal code enforcement. Out in the unincorporated parts of your county (where there are no city code enforcement officers) recognizing the usefulness of these criminal laws falls on the deputies and constables that keep the peace in these areas.



Cat Catching a Mouse at an Illegal Dump Site  
or, Cat Proves Rodents Present at Public Health Nuisance

### **TOPIC #3: ENFORCEMENT CAUSES CHANGE ... NOBODY LIKES THAT**

Enforcement is usually about changing local enforcement systems to be more efficient, which boils down to getting people to change their behavior. Getting people to change the ways they are doing things is never easy.

Let's say you change the way dumping is reported to your city. More reports necessarily produce pressure to have more enforcement, which means that some folks are going to have to change the ways they do their jobs ... or resist those changes to make you just go away.

Of course, the violator will be forced to change too, and he will certainly not be happy about that.

#### **a) What Pollution Response Systems Have to Do**

Thinking about illegal dumping as an example, at a minimum anti-pollution enforcement systems are complex. They must at least be able to:

- (1) Receive complaints from the public or members of government roughly identifying and locating the dumping or other pollution;
- (2) Preliminarily investigate to determine if a violation has actually occurred;
- (3) Investigate more closely to identify the detailed violations involved, thus establishing the seriousness of the problem;
- (4) Determine the elements of the charges to be proven;
- (5) Systematically prove each element;
- (6) Identifying violators and witnesses and interviewing all parties;
- (7) Create a documented case referral to a prosecutor, including recommendations;
- (8) Refer the related Public Health Nuisance to the Local Health Authority for abatement under THSC Sec. 341.012;
- (9) Allow time for the prosecutor to educate herself on the provisions of these unusual laws and to build a case;
- (10) Prosecute the offender, including attempts to agree to a settlement not requiring a trial; and,
- (11) Adjudicate the case and apply punishment.

These are just the major steps; each requires extensive documentation.

If local government makes the changes that allows (#1) above to happen more easily, processing volumes necessarily will have to increase across the system. More cases in; more cases processed at each step; more cases out ... if everything works perfectly in each of the various departments of government involved. Bottlenecks are more likely to result at first; each of these has to be identified and fixed. All of this requires more meetings, time, and money.

Moreover, increasing the ability to receive more transactions (#1), creates an expectation among those reporting the problem that something good will happen. Once a program of identifying additional violations is implemented, if the dumping is not abated pretty quickly additional complaints may be generated on the same violation (these duplicates will have to be identified and eliminated from the system). Moreover, in the absence of fast abatement those generating the complaints will conclude that local governments are not going to do anything.

Or, even more interesting is the possibility that there will be a breakdown at the end of an otherwise functioning process. Suppose the Local Health Authority required in step (#8) to effect abatement by working with the violator fails to act and the waste remains wherein was dumped? This will simply encourage more dumping at the same location.

Or, suppose the prosecutor needed in steps (#9), (#10), and (#11) stops doing these cases? Perhaps that key prosecutor was the only one who knew how to efficiently handle these violations and she retires? Or, in a one-person operation, perhaps the prosecutor loses his or her bid for re-election and the new person (almost always a former defense attorney) just has no interest in anti-pollution cases, or, in his spare time, is a slumlord himself?

In this unfortunate situation, a finely tuned system can just grind to a halt as un-prosecuted cases pile up.

*“Our new DA won’t take dumping cases.”*

*“Why not?”*

*“Oh, I arrested his brother for illegal dumping a couple of years ago and everybody got pissed off.”* (Actual conversation with a county enforcement officer.)

Any attempt to increase local responses to pollution will, sooner or later, have to confront the inertia (and missing pieces) in the present system. Obtain the support of all

the elected officials and department heads to be impacted by the changes, don't expect instant results, and don't be surprised when things don't work as planned immediately. Reality sometimes has to be mended a little and tweaked before it can work exactly as visioned.

*"We were doing pretty good at forcing those substandard houses around the college to be fixed up. Then we got orders from the top to back off."*

"Why? Did y'all back off?"

*"I don't know why. Maybe we were doing too good a job of forcing compliance. Or maybe somebody higher up got pressured or got invited on a fishing trip. You damn right I backed off, I need this job, and we've always got plenty to work on elsewhere."* (Another actual conversation).

## b) Systems Resist Change

**BY AND LARGE, SYSTEMS RESIST CHANGE. MOST STABLE SYSTEMS ARE ALREADY PRODUCING WINNERS AND LOSERS ... THAT'S WHY THEY OPERATE AS THEY DO ... AND THE WINNERS USUALLY LIKE THINGS AS THEY ARE ... SO THEY WILL WORK TO KEEP THINGS FROM CHANGING. IT IS NOT ALWAYS APPARENT FROM THE OUTSIDE WHO THE WINNERS CURRENTLY ARE, BUT THEY ALWAYS HAVE THEIR EYE ON YOU ... AND ON ANYBODY ELSE WHO THREATENS THEM.**

- For example, if the level of code enforcement in a community tended to ignore residential code violations in some sector of the city, the winners could probably include the slumlords who are not pressured by the city to keep their properties up to code. But perhaps the code officers who can avoid these particularly politically-charged cases are "winning" also. A major slumlord — or his brother — may even be a member of the city council, from which position he brings (most likely) illegal pressure on the managers of the code enforcement department to "go slow." This situation has happened more than once in Texas.
- Or perhaps in areas of the city with high rates of evictions, landlords regularly face high disposal costs of cleaning semi-vacant rental property after a tenant has left. Rather than incur these extra costs, the landlord may simply instruct his clean out crew to *"Dump that stuff in the middle of the alley, but not directly behind the house, and don't get caught!"* knowing full well that blocking regular waste collection trucks will trigger "emergency" alley cleanup by the city ... and free disposal costs to him. Cities rarely attempt to recover the costs of these emergency clean-ups.

All systems, no matter how they look from the outside, already have winners and losers. It also seems to be some sort of Iron Law that *“winners seldom relinquish their positions voluntarily.”*

No matter their level of performance, most systems are fairly stable until change is introduced: they just chug along in some sort of every-day-ness, serving their patrons. When change is introduced, things start rattling, the wheels start coming off, system operators start complaining about having to work harder, to learn new ways to do things, and those benefiting under the current system become more serious about resisting change.

Sometimes governmental managers who were not included in the initial decisions to modify a system will, along with some employees, attempt to prevent the changes and revert to the “better, old” way of doing things. Sometimes they are mad because they weren’t asked to participate in the planning; or maybe they just don’t want to learn a new way of operating. This certainly applies to local systems created to stop illegal dumping and polluting.

The “losers” are generally pretty easy to identify where waste is concerned. They’re the folks who have bad waste pick-up service, often have poorer physical health, and live in neighborhoods with a lot of waste scattered about.

*When I was a kid walking home from elementary school in a poor part of Dallas, I thought those mattresses that were dumped here and there on our walk home had been thoughtfully put out by our good neighbors so that we kids would have places to rest on our way. I was always touched by their generosity. There’s no telling what strange parasites and bacteria we were carrying back then. When I mentioned the mattresses to my parents, their answer was, “Those are dirty! Stay off of them!” (Thus I discovered a very easy way to rebel: just wallow on some suspect mattress.)*

Often, if you drive around a town in Texas you’ll soon roam far enough to conclude there must be two different sets of municipal codes at work: one for the wealthier parts of town and another for the poorer.

No matter how you are making your request — in person, by door hanger, letter, or newspaper announcement — you are asking people to do something different.

And you’re from the government, of which very few people are big fans just now.

And there's a big power differential, because the citizen knows, one way or the other, he is going to have to comply.

Unless, of course, the violator has been spoiling for a fight with with government and you have graciously presented yourself as "fresh meat," in which case he may be secretly delighted you have appeared in his life.

There is also the real possibility that a customer is having serious mental struggles. Before COVID-19 made it's appearance, mental health studies in America would routinely show that around twenty per-cent of us were having such mental problems that we should be under a physician's care. And that's before making allowances for our various addictions and the results of being cooped up for long periods of time dodging COVID-19.

There are a LOT of humans right now operating "under enormous stress and with fewer reliable resources." All attempts to improve anti-dumping or Public Health Nuisance enforcement in a city or county will require the best thinking you can muster. Consequently, there is a great opportunity for conflicts between citizens and their neighbors to increase, which can in turn generate more complaints as each party becomes subject to closer scrutiny by the other.

It also means that code enforcement and other officers having direct contact with citizens need to constantly do the best job they can on keeping their own heads and hearts in the right, calm place.

**SYSTEMS PERPETUATE THEMSELVES. ALL ATTEMPTS TO IMPROVE RESPONSES TO DUMPING AND OTHER POLLUTING IN A CITY OR COUNTY WILL REQUIRE THE BEST THINKING YOU CAN MUSTER. EXPECT SIGNIFICANT OPPOSITION. BE PATIENT. DON'T GIVE UP. TAKE CARE OF YOUR OWN MENTAL HEALTH.**



Required WHP Number Written in Dirt ...  
Should Have Written the Company Name Too — TWC Chapter 29  
Photo by: Rickey George III



## TOPIC #4: DUMPING HAS BEEN DISCOVERED ... NOW WHAT?

It is easier to find dumping than it is to respond to it.

### a) Five Examples from Real Life

#### Example #1 ...

A city code officer notices some discarded furniture thrown right in the middle of an alley behind homes, where it clearly will prevent the operation of trash trucks running their regular routes until it is removed. It's not readily apparent how the furniture got there or who dumped it, but it is certainly a hindrance to city waste collection operations. A city has to have a sophisticated way to respond to this simple, recurring problem, which presents a series of issues:

1. How does the city pre-arrange to discover these situations? Does it solicit the help of all other city employees or citizens who might see such a thing? Does it run "scout" cars through the alleys a day ahead of the regular collection routes to assure the trucks will have access? Does it simply ignore the issue until a driver calls with an alley blocked so badly that he cannot run the route, then figure out what to do? Does the city manage this data appropriately so that it can recognize and eventually respond to recurring patterns?
2. Regardless of the formal notification process, should a code enforcement officer seeing the furniture respond in any way, for instance, by informing Sanitation Services (the department running the waste hauling trucks)? Perhaps she should just learn to ignore such things? After all, the job as defined for the code officer is to work with *property owners* and *possessors* to help them learn and follow codes. So why should she respond to this alley dumping in any way, unless the officer is willing to work, for a moment, outside her area of responsibility (this is called "Doing extra work for no extra pay," and many people are generally opposed to the idea)? Once the city has decided that code officers and other city employees should respond to such situations by sending location and other information to Sanitation Services, the officers must be trained and provided a form to use and so on. A system has to be invented and implemented.
3. But let's suppose the code officer has received no formal directive to report the dumped furniture, but nevertheless feels compelled to make her city better (and realizes that if trash collection trucks can't do their pick-ups that

citizens will be slowed in cleaning their properties) and decides to call somebody. Will the Sanitation Services want this information at all, or will they be grumpy to her?

4. Once Sanitation Services is informed that there is a blocked alley, they have to develop a way to respond. Do they put her information about the blocked alley — and the same kind of notices received from the public — on a list of some kind? Then what? Are there resources sitting in reserve, just waiting to act to go clear the alley? Once there is always more than one site on the list, are the items worked in first-come-first-served order ... or is it worked based on the perceived property values of the neighborhood ... or in relation to the phone calls the department receives from elected officials? That department has other basic responses policies to establish too. Do they:

- (a) Skip collection that day on that part of the route?
- (b) Develop, schedule, and dispatch a special Alley Cleaning Team (I know of a Texas city that has two of these that clear city alleys every weekday)?
- (c) Rely on the trash collection truck drivers to plow through as best they can, including pushing the furniture out of the way (resulting in occasional vehicle damage, damage to fences, and increased worker back injuries when the drivers decide to move something by hand)?
- (d) Declare — sometimes suddenly — that a property owner has responsibility for keeping alleys parkways clear of waste *“to the center line of the alley and to the center line of the street”* and fine the property possessors for allowing “their” part of the alley to become a illegal dump?
- (e) Do something else that clears the alley now and attempts to make sure it doesn’t happen again?

All of these responses require money and time neither of which were budgeted.

5. Sanitation Services may respond to the Code Enforcement Department, *“If you are going to report these to us, you have to help figure out, fund, and manage a response.”* That should pretty well assure that the Code Enforcement Department won’t notify Sanitation Services ever again. The system operating principle becomes: *“If you don’t have a fix for a problem, suppress the incoming information.”*

6. Since these are usually Class A Misdemeanors or even State Jail Felonies (under THSC Chapter 365, based on the weight or volume of the waste), are city police routinely involved in these situations to identify the criminal violator and bring charges? If the police are not involved, why not?

7. Now figure out the “simple” answer to this when the state is in the middle of a dynamic pandemic that is resulting in:

- Lower city budgets from reduced sales tax revenues;
- Erratic availability of staff from periodic isolation and quarantines;
- More furniture dumped in alleys (from the increase in evictions and related rental “clean outs” by “pop-up” companies);
- Pressure on Sanitation Services to reduce their operations cost (so having extra crews and specialized vehicles to clean alleys may no longer be an option);
- More complaints from community organizers (“The city is just standing by and letting our neighborhood turn into a dump!”); and,
- More delinquency from kids burning furniture in alleys because they are bored and schools are closed — and greater firefighting costs.

And these are just the foreseeable problems; there are other consequences that will surprise everybody.

Through all of this, part of the overall system will be working to improve things, literally to “Do more with less,” and other parts of the system will be fighting any changes; moreover, there will be periodic gaps in the staffing from unexpected illness. City management will have to spend time and consulting money to understand and fix many recurring problems, all generated because somebody — probably a landlord saving disposal costs of cleaning out after a tenant vacates — wants to save some money.

Deciding how to respond to the first report of new information (“alley blocked by dumped furniture”) is a far simpler thing than deciding how to respond to habitual dumping that blocks alleys.

Example #2 ...

About twenty years ago, the Lower Colorado River Authority undertook what looked like a brilliant project: They used their light aircraft and pilots to chart apparent illegal dumping along the Colorado River south of Austin. Trash dumps close to the river were found from the air, latitude and longitude of each dump was determined, and aerial photographs of each dump were made. All of this was a magnificent attempt to identify potential sources of pollution that could affect the water quality. The LCRA produced an outstanding CD with this information. There were several hundred of these dump sites identified.

Although I don't recall the LCRA identifying a specific Texas criminal violation in these cases — after all, additional investigations would need to be undertaken “on the ground” to see if anything exotic had been dumped in addition to general waste — but there would have probably been these several recurring violations:

- (a) THSC Chapter 365 for the illegal dumping — provided that a particular dump could be determined as having been created within the two or three year time period of limitations found in Chapter 12 of the Code of Criminal Procedures (some of these, the ones that hadn't washed away in floods, were probably outside the period in which this law could be used);
- (b) THSC Sec. 341.013(c) for the Public Health Nuisance created by the dumps being breeding places for mosquitoes, rats, and other disease carrying vermin. This violation sets a small fine only, but each and every day of a continuing violation shall be prosecuted as a separate violation;
- (c) Texas Water Code Sec. 7.145 for felony water pollution, including disposing waste into *or* “adjacent” to water in the state without a permit. The penalty for this violation by an individual is a fine to \$100,000 and/or five years in prison. Each and every day of a continuing violation may be prosecuted as a separate violation; and,
- (d) Texas Water Code Sec. 7.147 for misdemeanor water pollution, including disposing waste into water in the state without a permit. Perhaps this violation could have been used if the dumping happened in the area the river occasionally flooded (and most of the dumping was very close to the water already). The penalty for this violation by an individual is a fine to \$50,000 and/ or one year in jail. Each and every day of a continuing violation may be prosecuted as a separate violation.

**So, faced with these several possible criminal violations at several hundred locations, what happened next? Nothing.**

I was told by a senior person on the project at the LCRA that the TNRCC simply didn't want to attempt to apply either administrative or criminal laws to the situation; there were simply too many locations to add to the current workload. And anyway, it was argued, these are crimes, and illegal dumping crimes are generally prosecuted by the District and County Attorneys where the crimes were taking place, rather than the Environmental Crimes Unit of the TCEQ.

So to prosecute these cases authorities in six jurisdictions would have been involved: Travis, Bastrop, Fayette, Colorado, Wharton, and Matagorda counties. Each of these has an elected County Attorney (which would more likely to have been the level at which these crimes were prosecuted rather than by District Attorneys), none of whom (except Travis County) at that time had any experience prosecuting environmental cases. Moreover, the evidence would promptly disappear each time the Colorado River flooded (which, after all, was one reason the waste was dumped so close to the water). The probable defendants would have mostly been large, well connected land owners along the river, hardly the defendants that any elected official would have wanted to charge.

The LCRA had completed a very innovative, expensive project of identifying criminal violations impacting the quality of water in the Colorado River, which was clearly within their agency mission. But it turned out that those at the next step in the process were unable or unwilling to respond. So the project just quietly died. What could the LCRA have done better, if anything, other than save the cost of the entire data-collection process? What was going to happen with the data should have been established before the cost of collection was expended.

**So you'd have to say that this project failed for lack of sound planning ... if the object of the project was to abate the dumping. If the object of the project was to produce an impressive CD, then it was a big success.**

Simply knowing where the dumping is does not create the systems for effective response. The rest of the response system has to support greatly increased work volumes; and, officers and prosecutors would have had to be trained to respond. In this example, why not just wait for a flood to "fix" the problem by washing this waste downstream to a less conspicuous place? After all, that's the way things have happened for decades.

### Example #3 ...

This example isn't from Texas, but it demonstrates the same issue: Knowing where dumping is taking place isn't enough. For the last twenty or so years, Keep Pennsylvania Beautiful, using trained volunteers and State funding, has conducted ongoing surveys of dumpsites in the 67 counties in their state. They have produced a number of reports, generally one for each county, that contain a great deal of information, including pictures and locations of the dumping and classification of the dumped material. Their magnificent work can be found at <https://tinyurl.com/yy5fp78b>. The resulting county-wide documents are forwarded for local action, which runs from no response at all to a local government-funded cleanup to volunteer cleanup projects.

The county reports are excellent for public education on the scope, location, and type of dumping. There is recurring boilerplate in these county wide Illegal Dump Surveys, most of which are just over ten years old, that addresses the common ongoing situation in these counties:

The **POSSIBLE CAUSES OF DUMPING** sections in these reports regularly includes this language:

- Shortage of enforcement *Unfortunately, many communities cannot devote people and resources to effectively deal with illegal dumping. As a result, dumpers do not fear prosecution, thus have no reason to stop their habits.*
- Education *Illegal dumping has been a learned habit for many. Prior to anti – dumping laws, it was common practice to use open town dumps, burn or bury trash, or dump in a convenient out of the way area. Today we know the harmful effects from illegal dumping. Education is key to diminish the habits learned and teach the public proper and safe disposal practices.*

The **POSSIBLE SOLUTIONS TO DUMPING** sections include these common remarks:

- Community education *Intentional illegal dumping and littering are social problems that require a shift in attitudes and practices. Education is the key to changing values, habits, and attitudes. Education programs should be tailored to inform the community and can take many forms, such as, school/community presentations, press releases, radio and newspaper ads, and publications.*
- Enforcement of existing laws *Any improper disposal of trash is illegal and violators can be prosecuted. Numerous Pennsylvania agencies enforce*

*laws addressing improper disposal of trash. The Pennsylvania General Assembly creates and enacts our littering and dumping laws. County and municipal governments create and enact ordinances that are specific within their local boundaries.*

Again, Keep Pennsylvania Beautiful has made a great effort in using volunteers to collect dumping data, in this case resulting in very useful information. This detailed information, however, has been met with different levels of response from local governments across their state, with illegal dumping enforcement being at a level where a general statement about its lack has become boilerplate. Keep Pennsylvania Beautiful found that it was easier to find and geo-locate the dumping than it was to get local governments to respond.

Simply knowing where the dumping is does not create the systems for effective response.

#### Example #4 ...

In the Texas law primarily used to control illegal dumping — THSC Chapter 365 — the following subsection appears:

*Sec. 365.012(m) A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.*

Note that this provision does not require the *conviction* of the individual reported, but just his or her *prosecution*. However, as far as I can determine, after discussing this law with many appointed and elected officials around Texas, I can not locate a government that has ever offered a reward to find additional illegal dumping cases. Every officer active in the enforcement business claims to already have enough cases to work on, and if you really want to increase dumping leads, just have the local newspaper run a story about a successful case.

Why is this provision seldom (if ever) used? When I have asked officers active in illegal dumping enforcement if they are running out of things to work on, they always laugh.

**Example #5 ...**

Back in 2009 a Representative to the Texas House from the Valley wanted to do something to respond to waste dumping that he often saw along Texas rivers and creeks as he drove around our state. So he introduced a bill that would require the TNRCC to make and TxDOT to put a sign, visible from the road, at every point in Texas where “major highways” crossed “waterways.” The signs were to carry a 1-800 phone number that motorists could use to report illegal dumping they saw as they crossed bridges. The phone number on the signs was to be answered by the TNRCC (now TCEQ), and reported dumping violations would be forwarded by the TCEQ to the sheriff in the county where the dumping was observed.

This was a great concept: use the observation powers of thousands of motorists to report dumping, and channel their calls to law enforcement officers who can do something about it.

**Great idea, but it never made it out of the State Legislature that year.**

Since this didn't become law in 2009, no signs were posted and so reports of dumping adjacent to water could be made. No sheriffs acted in response to these additional apparent dumping crimes. No additional dumpers were prosecuted.

**THE QUESTION HERE IS, “WAS THIS BILL A GOOD IDEA (BECAUSE IT WOULD GREATLY INCREASE REPORTS OF DUMPING THAT HARMED SURFACE WATER) OR WAS THE BILL A BAD IDEA (BECAUSE A LOT OF THOSE REPORTS WOULD NOT BE ACTED UPON)?”**

A lot of thought was spent trying to see how such a law could be practically implemented. A few questions emerged:

1. The law itself had neither a timeframe for TNRCC and TxDOT to act, nor any penalty in case they simply ignored its provisions.
2. But suppose that the agencies had made and posted the signs; further suppose that the public responded. If TNRCC received 100 calls on “*There is a gray couch dumped in Palo Pinto County, down by the Brazos River where IH-20 crosses,*” would they (a) attempt to consolidate those calls into one report to the county sheriff, or, (b) treat these as 100 separate reports and send them all individually? The immediate response was, “We’ll have to send them all individually. Maybe it was a different couch in some of the sightings? How are we ever going to consolidate such sightings?”
3. Who is going to figure out in what county the violation actually occurred,



who is current sheriff in that county, and how to contact him or her? What if the caller incorrectly identified the location? The TCEQ will have to build and maintain a data base to make sure everything gets to the right person? In what program will that task be placed and funded?

4. What would a sheriff do upon receiving report-after-report of apparently the same violation? Would he or she even know what laws to use since few have experience in environmental enforcement? How long would it take until the reports were just put in the trash can by the administrative assistant in many sheriffs' offices around the state?

5. Where should the signs actually be posted? What's a "major highway"? IH-20 certainly qualifies, but at the time this law was proposed, "major highway" was an undefined term in state law. "Water" was defined appropriately, but what about the idea of major highway "crossing" water? What about places in East and Southeast Texas where highways run along side of bayous and other continuous bodies of water and bridges repeatedly cross these bodies of water, for miles and miles? Should signage go up in these situations too, and, if so, where should the signs be placed?

6. What do you do when the public outcry begins of "I called in dumping where the highway goes over the river. In fact, I've called it in repeatedly. Nothing ever happens. *'Our Government in Action,'* I guess. Not very impressive." **If you give the public a way to report dumping, you also have to decide what to tell them when their reports produce no apparent results.**

7. "Then, would EVERYBODY get \$50 for each report that results in prosecution?" THSC Section 365.012(m) allows a city or county to pay up to \$50 for information resulting in the prosecution of a dumper. How is this not exactly what is happening? "If the law provides for a \$50 information bounty why is the county cheating me out of my money?"

8. Wouldn't this program, if "successful," actually result in counties eventually simply using county road crews to pick up the waste reported? How much should be budgeted for this? Otherwise, by failing to do anything the counties would be conveying to the public, repeatedly, that some counties were just too ineffective to run such a simple program. Would anybody ever get prosecuted for the dumping? If not, what would be the deterrent?

The next time you cross a highway bridge over a river in Texas, look down along the river bank and see if anyone has been dumping. Before to say, "You know,

there ought to be a law than gives the public a way to report such dumping,” be sure also to think to yourself, “Wonder how that could actually be made to work?”

**ALL THAT DISCUSSION WAS AROUND WHEN THE BILL WAS PROPOSED IN 2009 -THE ONE THAT FAILED.**

**IN 2011 THE SAME BILL WAS PASSED AND BECAME LAW. YOU CAN READ IT AT TWC SEC. 26.053. DON'T MESS WITH TEXAS WATER PROGRAM.**

Of course, none of the issues above was resolved before the bill became law in 2011.

*HB 451 in the 2011 Regular session; passed the House 132 to 17; passed the Senate 31 - 0; became law effective September 1, 2011; never rescinded.*

**TCEQ AND TXDOT FOUND A WAY TO SIMPLIFY ALL OF THESE QUESTIONS: THEY JUST NEVER MADE THE SIGNS, SO THE CLEAR DIRECTION OF THE STATE LEGISLATURE WAS SIMPLY IGNORED.**

There is still a lot of dumping where highways cross water in Texas, but there are no signs posted and there is no 1-800 number to call. So the problem of sending multiple reports of the same dumping to the sheriffs has been taken care of.

But what’s to stop a county deputy or constable from investigating dumping down by a river where a highway crosses? Nothing.

### **b) So What’s To Think About in These Five Examples?**

Why is it that we can drive by the same illegal dump or Public Health Nuisance day after day yet nothing happens, 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 modern Texas? For instance, you can’t commit a crime on your property and then demand that it be overlooked because of where the crime happened.
- Is it because the property owner is simply too important a person to be expected to follow state anti-pollution laws, so the rest of the community simply has to indulge him?

- Is it 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 her responsibility to force the abatement of Public Health Nuisances ... or 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 ARE 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 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 IN 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 for, 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 way or find a way to effectively engage?

It seems to me than a community makes a COLLECTIVE choice about dumping.

**WHEN IT DISCOVERS ILLEGAL DUMPING, THE COMMUNITY CAN HAVE:**

- (1) EFFECTIVE ENFORCEMENT AND A CLEAN PLACE; OR,**
- (2) IT CAN HAVE THE REASONS WHY IT DOESN’T HAVE EFFECTIVE ENFORCEMENT AND CONTINUE TO HAVE THE ILLEGAL DUMPING.**

## TOPIC #5: THINKING ABOUT CODE ENFORCEMENT

Statistical information in this section is from the Annual Statistical Report for the Texas Judiciary; Fiscal Year 2018 (<https://tinyurl.com/y3pzah8n>). Like the TCEQ annual report, this one issued by the Office of Court Management is full of useful information. You'd most likely gain in your knowledge of the overall Texas court system by carefully reading this document.

There are more Municipal Courts in Texas than any other category:

- Municipal Courts - 940
- Justice (JP) Courts - 803
- District Courts - 469
- Constitutional County Courts - 254
- Statutory County Courts - 245
- Statutory Probate Courts -18

Anti-pollution cases originating inside cities (often in the form of code violations) will be heard primarily by Municipal Courts. They will also hear (1) *first-offense Public Health Nuisance cases*; and, (2) *illegal dumping criminal cases where the weight or volume discarded is under five pounds or under five gallons*. Consequently, most illegal dumping (with larger weight or volume of waste) as well as cases originating under the Texas Water Code will be heard at County or District Court.

In FY2018 there were 940 Municipal Courts operating in the state using 1,317 municipal judges. These courts exercise *exclusive original jurisdiction over municipal ordinance criminal cases*, among other things. *An offense that arises under a municipal ordinance is punishable by a fine not to exceed: (1) \$2,000 for ordinances that govern fire safety, zoning, and public health, (2) \$4,000 for dumping of refuse, or (3) \$500 for all others.*

Of these 940 Municipal Courts, 192 (just over 20%) are currently Courts of Record (<https://tinyurl.com/y63w9ghl>). This means that any appeal of their ruling can be taken up in the county court system as a review of the Municipal Court's record, without having to start the process all over at the county level with a *de novo* hearing. But very few Municipal Court cases are appealed annually, so that's not the actual value of being a Municipal Court of Record. For example, only 0.3% of Municipal Court rulings were appealed in FY2018 (4,333,950 total cases of all categories disposed, of which 12,929 were appealed). People tend to accept the decisions of their Municipal Court, perhaps because the largest number of cases they hear are traffic and parking related, where violators can simply pay a fine by mail.

Being a Municipal Court of Record can be very useful in dealing with *substandard structure* cases. Otherwise, an appeal on the issues of (1) *whether or not the city followed its process correctly in dealing with an alleged substandard structure*; and, (2) *whether or not the property actually met the definition of being substandard* would have to begin with a new trial on both issues in a higher court. It is much less expensive and much faster to deal with these issues in a Municipal Court of Record than starting a case from scratch in a higher court.

There is no requirement that Municipal Judges be attorneys. However, 58% of them are, and those have been attorneys for an average of 30 years. Also, 99% of Municipal Judges are not elected, but are instead appointed to office by the city. So these judges are usually (a) highly educated individuals; (b) with long ties to their communities; and, (c) fully competent in understanding and applying local municipal codes and state anti-pollution criminal laws where no possible imprisonment is involved (such as first-offense violations of THSC Chapter 341 Public Health Nuisances).

Municipal Courts were very active in Texas in FY2018:

- Active pending cases (all categories) at start of year: 7.3 million
- Cases added during the year (all categories): 5.0 million
- Cases disposed during the year (all categories): 4.9 million

#### **a) Code Enforcement During COVID-19**

It's important to reflect on what lessons were learned during the COVID-19 pandemic. Such a disruption may well happen again.

I remember it as being a time when code officers, their managers, the municipal court system, and the citizens with whom code enforcement officers work were all under enormous stress, and this altered the “normal” structures of human relationships within which code officers work.

At the height of the pandemic, as part of a survey of officers on another topic, we asked:

***In your opinion, what is the worst thing about doing environmental enforcement during the pandemic?***

In a sense, this was a “throwaway” question, not scientifically structured, and asked only to satisfy my personal curiosity. I asked it because many officers whom I know were clearly struggling, both because of the direct impact of the virus on their lives and the changes the virus had worked in the lives of those around them, especially among

the citizens/customers. Once analyzed, the responses to this question come down to these five categories:

### 1. Personal health risks to officers

There was still great uncertainty about how this particular virus actually spreads and who is most susceptible. There were too many venues where people regularly interacted without masks and social distancing, thus risking greater transmittal in the community, including transmittal to officers. Not everyone was taking the virus seriously, regardless of the impact on hospitals and health workers.

No one then knew the *true* health risks of this disease — from very little in some individuals to death in others; many survivors may have developed life-long health impairments (this remains a major concern). Yet officers had to work with people anyway who were possibly infected, putting others — including officers — at risk. In addition to the physical risks to officers were the stresses of having an uncertain work future. There was the fear of eventually being furloughed because of ongoing budget pressures on cities and counties. Retail sales, the sales-tax generating lifeblood of local governments, were greatly reduced statewide. Going home after work didn't provide much relief: often family members were also ill.

### 2. Increased pressures on property owners

At the same time that officers were concerned with becoming infected in the scope of their jobs, property owners were experiencing greatly added pressures too. With so many people having uncertain jobs, spending money on property improvements became for many a low priority. Many citizen's simply didn't care as much about their property or enforcement. Citizens were sometimes becoming more evasive. Trying to convince people that it was important to keep their property compliant with local codes had, in some places, become much more difficult. More citizens avoided interactions with officers because the citizen or members of their families were sick (or pretended to be sick to avoid officers). In either case this assertion of illness had to be honored. In many cases, because people were forced to miss work, there was simply no money for improvements.

### 3. Difficulties in making effective citizen contact

The impact of the virus consequently resulted in less effective contacts between officers and citizens. There were fewer and shorter face-to-face discussions with citizens about violations and bringing their property up to standards. In some cases fewer and shorter interviews with citizens was the result of departmental policies requiring limiting meetings; in other cases meetings were cut short

because of the citizen's unwillingness to observe social distancing and masking protocols on his own property.

#### 4. Overall weaker enforcement process

There was far less opportunity for joint inspections of problem properties with citizens, and there was fewer opportunities for discussions of problem properties with colleagues. In some cases the Municipal Court system greatly slowed down or was not hearing code violation cases at all; this went on for months.

Now that the pandemic has subsided, I've heard of no city that has conducted a "Lessons Learned Under COVID" after-action review and developed contingency plans that can be applied to the next virus or other disaster that impacts the code enforcement process.

Maybe this would be a good time for management to get to know the Emergency Management Coordinator for their city or county and have discussions on drafting a plan of action for the next prolonged event, which will surely come. There is too much valuable experience in the heads of code officers and managers to simply return to "business as usual" as if operations had not been totally disrupted.

### **b) Are Municipal Courts Being Underused?**

As Municipal Courts come back into full operations, it's a good time to ask this question.

Texas Municipal Courts normally handle four types of cases: (1) Moving traffic violations; (2) Parking violations; (3) Some Texas Penal Code violations; and, (4) City ordinance violations.

However, not all pollution can be controlled with Municipal or City Codes, so your municipal court should be requested to act on violations to the Public Health Nuisance law, THSC Chapter 341, and especially this violation which local law enforcement can cite:

*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.***



The penalty for this criminal violation is small ... first offense of \$10 to \$200 ... but (1) it is a *criminal* offense; and, (2) each day of an ongoing violation is to be cited as a separate offense [THDC Sec. 341.091(c)].

Also, don't overlook that a Municipal Court can assess a fine in a trash-related code violation to \$4,000 now, regardless of the language in your city charter on fine maximums.

We strongly suggest getting elected officials (including prosecutors), the code enforcement and police chief, the city manager, and the city attorney in the same room to have a candid discussion about (1) what changes would have to happen to begin enforcing criminal environmental laws in the jurisdiction; (2) how to go about beginning to use the \$4,000 maximum municipal code violation fine allowed; and, (3) discerning what liability might accrue to a city or county who takes a unilateral decision not to enforce an entire class of state criminal law, such as the state criminal environmental laws. It's hard to see how intentionally failing to use state criminal laws is ever a good policy decision.

Although thousands of code violations filed in Municipal Courts each year in Texas concern local pollution, it's still true that:

- Very few Municipal Courts hear Public Health Nuisance (THSC Chap. 341) cases;
- Those JP and Municipal courts that do adjudicate THSC Chapter 341 cases seldom apply the requirement at THSC Sec. 341.091(c): *Each day of a continuing violation is a separate offense*;
- Few Municipal Courts apply the higher penalty of \$4,000 (as authorized at Local Government Code Sec. 54.001) for city code violations involving dumping of refuse (of *any* weight or volume).

The first of these reflects the fact that too often police (who can file THSC Chapter 341 cases) simply have not been included in the local anti-pollution process. This often reflects that city management simply has not structured their local response to pollution to include police. The second probably reflects more a reluctance to impose a major fine — equivalent to the \$4,000 fine of a Class A Misdemeanor — on the part of the judge or, again, just lack of knowledge.

### Deciding to Be Dirty

If your city is not (1) routinely processing Public Health Nuisances through the Municipal Court; and, (2) only occasionally imposing higher fines for dumping refuse,

then someone has — consciously or unconsciously — decided to not use all the tools the State Legislature has provided to keep your community clean and healthy.

This would be a good point to underline the fact that much illegal commercial dumping in larger cities is ON neighborhoods of color. Some residents may try to save money by adding their own garbage to the pile, which can be distinguished as “dumping IN the neighborhood.” While code enforcement may work to slow dumping by residents, criminal laws are the right tool to use on the commercial dumpers,

*City Ordinance Cases only (total in state in FY2018, not including Ordinance Traffic Cases):*

- *Active pending cases at start of year: 614,070*
- *Inactive pending cases at start of year: 397,051*
- *New city ordinance cases filed: 266,488*
- *City ordinance cases reactivated: 79,089*
- *Total city ordinances cases on docket: 955,249*
- *Total cases dismissed pre-trial: 112,323*

So about 5% of all cases added to Municipal Court dockets in FY2018 (a total of 5 million in all categories) were the 266,488 new City Ordinance cases.

Most code enforcement officers are of the opinion that when a code violation case gets to the point of having to be filed in Municipal Court, the enforcement process in that case has taken an unfortunate turn. For a code case to appear before a Municipal Court, it has traveled a long road in which the city has *repeatedly* attempted to work with the violator in a non-confrontational way to resolve the issue.

Virtually all city code violations are corrected voluntarily by the owner or possessor of the property as soon as that person learns of the violation. However, no statewide statistics are retained of these successful situations; the state-level record keeping of city ordinance enforcement only begins with the filing of a “problem” case in Municipal Court.

**There is currently no way of determining the number of city code violation cases that are resolved *without* Municipal Court intervention, but clearly it is the majority.**

For every city code case that actually appears before a Municipal Court there may be ten or more situations that have been successfully resolved earlier in the code enforcement process. Or more. We simply don’t know that number, but it’s probably well

over a million cases per year, reasonably extrapolating from the 266,488 new code cases that were actually filed in courts in FY2018.

When you compare the code enforcement activity of the combined cities in Texas with the work done by the TCEQ (whose investigators regularly perform around 110,000 inspections each year), it becomes obvious that the bulk of environmental enforcement happens locally through code enforcement.

Consequently, because of the volume of important anti-pollution work undertaken by code enforcement officers and local registered sanitarians, we urge municipal leaders to make extra efforts to understand and support code enforcement activities in their communities. The inspectors working on these problems are the first line of defense against those conditions that reduce property values and impede healthy living.

But if you're having trouble with your code enforcement program having the effect you want, you should seriously consider (1) beginning to enforce Public Health Nuisance criminal cases; (2) encouraging occasional higher fines in Municipal Court; and, (3) encouraging police to police illegal dumping through THSC Chapter 365.

### **c) Relations with Local Police**

In many cities, if a knowledgeable code enforcement officer — one with a good understanding of local codes and state criminal law — finds a situation where an anti-pollution crime is taking place and calls the police, he or she may get the response, *“We don’t do code enforcement!”* If the code officer then responds with the question, *“Right. I do code enforcement. But, who do you suggest I call too get somebody to respond to the felony I’m looking at? Aren’t y’all responsible for felony enforcement, or is there another phone number you could give me?”* a useful dialog may have begun.

Police respond to crimes that are defined in state law. However, from time to time a particular police department may put special emphasis on certain crimes that are plaguing the city — or an individual officer may simply ignore responding to certain violations that he personally doesn’t think should be a crime, such as those controlling pollution.

I hate to mention it, but we used to ignore many domestic violence complaints too. *“Y’all calm down or I’m going to arrest somebody”* often resulted in an ambulance run to pick-up a body a few hours later. That was all changed, with a certain amount of

resistance from a few officers. In fact, in some cases law enforcement officers lost their rights under federal law to carry a weapon — ending their police careers — because of their *own* domestic violence violations.

**At some point city management will realize that enforcing anti-pollution laws is a key part of keeping our citizens healthy, productive, and prosperous.**

If a city or county wants to ignore an entire class of crimes — like the anti-pollution laws — at least let the city council openly direct the Chief of Police to do so. Put this bad decision in the record so that subsequent courts can easily find it. But don't let this bad policy be something your city just falls into through ignorance. Let any decision error that would take emphasis away from responding to environmental crimes be made openly by the elected officials, not pushed down to the Chief of Police or individual police officer.

#### **d) Code Enforcement Officers are Under a Lot of Stress**

Enforcement officers face complex human situations as a normal part of their work, both inside government and in dealing with the public. Internally their efforts may be harmed by unsupportive managers, including elected officials that pressure them to slant their enforcement in particular directions. In some extreme cases this may even get to the point where the elected official, in his zeal to please a citizen, member of the clergy, or local developer, commits a crime by attempting to pressure the code enforcement officer into delivering a particular outcome.

In many other cases these officers find themselves repeatedly interacting with members of the public who have serious, often longstanding mental health issues. These encounters are inherently dangerous.

Municipal code enforcement officers and registered sanitarians deserve our support, especially given the findings on public mental illness by various agencies. All of these reports have the same findings, year-in and year-out: America has a pandemic of mental health issues that pre-date our encounter with the coronavirus.

The Substances Abuse and Mental Health Services Administration reports:

*“[I]n 2010, an estimated 45.9 million adults aged 18 or older in the United States had a mental illness in the past year. This represents 20 percent of all adults in this country” and “The rate of mental illness was more than twice as high among those aged 18 to 25 (29.9 percent) than among those aged 50 and older (14.3*

*percent).*”

The Fact Sheet Centers for Disease Control and Prevention Report: *Mental Illness Surveillance Among Adults in the United States* reads:

*“According to the World Health Organization, mental illness results in more disability in developed countries than any other group of illnesses, including cancer and heart disease. Other published studies report that about 25% of all U.S. adults have a mental illness and that nearly 50% of U.S. adults will develop at least one mental illness during their lifetime.”*

Mental illness can sometimes become noticeable when interior mental disarray spills over to show itself inside the home and eventually spills out into the front yard, where it attracts community attention. Responding to the disarray, municipal code enforcement staff may find themselves dealing with untreated mentally ill and substance abusing members of the public.

**CURRENT TEXAS LAWS HAVE NO REQUIREMENT THAT CODE OFFICERS RECEIVE SPECIALIZED EDUCATION IN DEALING WITH MENTALLY ILL OR IMPAIRED CITIZENS AND IN MAKING SURE THAT EVERY INTERACTION IS A SAFE ONE FOR ALL PARTIES.**

Why not create a local requirement for your city to assure staff members encountering the public are as well trained to deal with impaired citizens as possible? By comparison, Texas peace officers are required to complete extensive Crisis Intervention Training (and regular updates) as a condition of maintaining their certification.

A difficult subject to discuss, but one that needs to be, is the increase in so-called “Deaths of Despair” among middle-aged whites in recent decades.

*Deaths from suicide, drug overdoses, and alcohol-related disease among middle-aged white men and women skyrocketed from 30 per 100,000 in 1990 to 92 per 100,000 in 2017. The spike in these deaths is almost exclusively confined to white Americans, both men and women, without a college degree. Mortality rates among college-educated Americans have continued to fall. Mortality rates for white-working class people in other wealthy countries are similarly in decline. (Washington Monthly, April-May-June 2020, <https://tinyurl.com/y95jeele>).*

The experts in this area of research are Anne Case and Angus Deaton. The name of their book is Deaths of Despair and the Future of Capitalism. The Amazon link is <https://tinyurl.com/y6rr6bjo>. This book is pretty much a “must read” for municipal and county employees meeting the public, especially those working in the enforcement professions.

For sure, if you are in the position of managing enforcement officers, be sensitive to the enormous (often hidden) stress officers are subject to in these days. All individual enforcement officers need to make special efforts not only to keep physically safe, but also to tend to their own mental and spiritual health too. No matter your role in our society, this would certainly be a great time to ponder your own prayer life; caring for your primary relationship with God is more important now than ever before.

#### **e) Problems We Had Before the Pandemic**

Several common problems arise in code enforcement that can't be tolerated in a fair and effective enforcement system. The fact that they keep recurring in many cities is worth pondering.

**Different areas of town often get different levels of enforcement.** Unwritten

policies that involve “looking the other way” in poor areas need to be openly discussed. Certainly, the absence of financial resources to fix properties in poor neighborhoods needs to be considered — along with the health impact on neighbors of taking a light-handed approach to enforcement in these poor areas. Because of the correlation of poverty and increased exposure to disease — and because diseases spread within all areas of a community as citizens interact — poorer sections of a community may require more rather than less attention.

Another common problem is that, strange to say, **too many code enforcement officers simply don’t know their city’s codes outside their areas of specialization.** We regularly ask in our classes, “How many code officers here have read all of the municipal codes of your city, so that you can better spot violations falling outside your area of specialization for referral to your colleagues?” In city-after-city and class-after-class, only 2% of the code enforcement officers present raise their hands. We’d suggest that a program of reading all municipal codes and being tested on their content be implemented for the officers in your city. Administer the test first, since the officers in your particular community might well be among the top 2%. If too many questions are being missed, that will tell you the additional areas on which to focus. And, for course, no fair penalizing or criticizing code enforcement staff who don’t do well in this initial knowledge testing; it’s not right to criticize employees for failing to demonstrate knowledge in areas that management has not asked them to learn.

Another issue is that of **official interference with code officers** who are trying to fairly enforce city codes in an even-handed way. This interference seems to come primarily from two directions: (a) attempts by mayors and council members to protect a disadvantaged or elderly constituent; and, (b) attempts by mayors and council members to protect their own pocketbooks in situations where they, their family, or friends are slumlords and want to use their official position to reduce their personal cost of complying with municipal codes on properties they own. Threats and attempts to intimidate officers easily flow from such things.

If it’s present in your community, interference by officials with local enforcement activities needs to be discussed openly and stopped. Sometimes it has moved beyond the “speech” level and deteriorated to being violations of the Penal Code by the official. The two most common violations by elected officials acting illegally in these situations are:

- Penal Code Sec. 38.15. Interference With Public Duties — a Class B misdemeanor punishable by a fine to \$2,000 and/or confinement to six months may apply; and,

- Penal Code Sec. 36.03. Coercion of Public Servant or Voter — a Class A misdemeanor punishable by a fine to \$4,000 and/or confinement to one year.



Tire Dumping in Harris County  
*Mathematical Genius, Actually*



## FINISHING UP

That concludes the reading material for this class.

You are now ready to take the open book test covering this material. Just follow the instructions in Step 3 on the Class Home Page to access the test. The passing score is 70%. You can take as much time as you need with the exam, and unlimited tries are allowed (with no waiting period between tries).

This is a class I'd much prefer to give an essay type exam, because I'd enjoy hearing your considered opinion to these topics. But the system is set-up for objective answers. I would, however, greatly appreciate any feedback or correction you may provide to any of this material. Thanks in advance for that!

Note that the first question on all our tests is on whether you have gone through all the class material (namely, this document) prior to attempting the exam. This is the one question that you have to get right to pass — along with sufficient other correct answers to reach a grade of 70%.

Upon successful completion of the test, our system will send me a message that you are ready for your certificate to be issued. I'll then do a personal check of everything and, assuming all is well, send your certificate by email. We usually complete this process and send your certificate the evening of the day that you pass the exam. However, in some rare cases there may be a slight delay. If it has been 24 hours since you passed the test, please email me at [ockels@tidrc.com](mailto:ockels@tidrc.com).

I hope that you have enjoyed this class and even learned a little. Please feel free to send any follow-up questions that you might have.

All the best, and I hope to see you online again or in a classroom in the near future.



Caught on Camera  
THSC Chapter 365 - Felony Illegal Dumping  
Ector County Environmental Enforcement