

Local Enforcement Options

This chart shows the ways that Texas cities and counties can effectively apply local codes and Texas criminal laws to control pollution in their jurisdictions. Feel free to use it in your work in any way you wish, including providing it to local elected officials.

Since 1996 the policy of the TCEQ (then known as the Texas Natural Resource Conservation Commission) has been that basic illegal dumping enforcement is the responsibility of local governments. Public Health Nuisance (THSC Chapter 341) enforcement has never, to my knowledge, been undertaken by the TCEQ Environmental Crimes Unit in a case, and is only partially enforced (if at all) by local health authorities, in spite of mandatory enforcement requirements set by the State Legislature.

When local governments decide to act to reduce pollution, they will, sooner to later, follow this sequence.

This document also appears in the left-hand column of the Class Home Page in the form of a separate .pdf file you can print for easier local use.

Texas Local Enforcement Options

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A. These Enforcement Issues Arise In Every Jurisdiction

1. Stopping local illegal dumping is NOT the TCEQ's job; it's local government's.
2. The laws are easy to understand and use, but new to most officers.
3. You'll not stop illegal dumping without law enforcement involvement.
4. You'll not stop illegal dumping by ignoring small businesses.
Tire dealers; rental clean out; construction/demolition; oil and gas waste
5. Getting prosecutors involved is critically important, since your city or county will often be working beyond Municipal Court or JP Court.
6. COVID-19 is slowing enforcement down all over the state.

B. Illegal Dumping Enforcement in Texas is Generally Done in This Order

The Beginning Point is Always Better Code Enforcement (If Available)

1. Municipal Code Enforcement (Applies only inside most cities)

Local Municipal Ordinances

- Fine to \$500 / \$4,000 (Local Government Code Sec. 54.001)
- Enforced By: Municipal code enforcement officers
- About 900 of Texas' 1,200 cities have city code enforcement; Great starting point to protecting land, water, air, and people; However, code enforcement doesn't work against criminals, such as illegal dumpers; Cities without a municipal court work through JP and use THSC Chapter 341.
- **Consider creating your own codes from state administrative rules if that helps: for example, Houston's scrap tire ordinance is based on a state administrative rule** [<http://www.houstontx.gov/scrap tires>]
- Other cities with scrap tire ordinances include Amarillo, Dallas, El Paso, Forney, Fort Worth, Gainesville, Grand Prairie, Harlingen, Huntsville, Laredo, Madisonville, Mineral Wells, Odessa, Pharr, and San Antonio (there are probably others).

MUNICIPAL CODES ARE NOT AVAILABLE FOR USE IN UN-INCORPORATED AREAS.

Two possible DUMPING-RELATED code violations may be involved, depending on the city:

- (1) Code violation for **having** refuse on a lot, penalty to be imposed against the property possessor and/or owner;
- (2) Code violation for **putting** refuse on a lot, penalty to be imposed against the violator [Note: this may be impossible in many cases, leading to the use of criminal laws by police]

Considerations:

- (1) Not all cities have municipal codes of any kind (only 900 of 1,200 Texas cities do);
- (2) Not all cities have codes against **putting** refuse on a lot (check your code language);
- (3) When dumper is NOT the property possessor, code enforcement still forces the property possessor where the dumping took place to pay for the clean-up. This can easily create political problems for the city and code enforcement officer;
- (4) Using taxpayer funds to clean-up behind dumpers — instead of increased enforcement — will eventually become too expensive to continue.

From This Point On, It's ALL Criminal Enforcement, Requiring Law Enforcement Officers

Build a local code/police task force to identify and respond to these problems.

2. Public Health Nuisance Violations (Applies EVERYWHERE in Texas)

THSC Chap. 341. Minimum Standards of Sanitation and Health Protection Measures

- **When code enforcement is not enough, this is the next level to use;**
- Fine of \$10 to \$200;
- Subsequent conviction ***within one year of first***: \$10 to \$1,000 and/or 30 days jail;
- Consider using civil penalty to \$1,000 per day for all subsequent offenses (not limited by the time following the first conviction) (THSC Sec. 341.092);
- Enforced By: Peace officers; County employee trained by health authority in the unincorporated areas [THSC Sec. 121.003(c)];

- Applies in cities and in all areas of county;
- Defines 12+ public health nuisances; **really good for scrap tires**
- No warning notice to violator required before citation issued; police may give warning tickets if they want to, but no warning is required in the statute;
- Mandatory health department directed abatement process in Sec. 341.012 widely ignored;
- Generally used for violations by individuals, but should also be routinely charged in addition to other violations whenever the criteria is met;
- Note that Chapter 341 is a fairly long law. However, only a few sections are needed for Public Health Nuisance enforcement: read from the beginning through Sec. 341.019 and Sec. 341.091 (enforcement penalties). The rest covers a wide range of topics not directly related to illegal dumping or Public Health Nuisance enforcement.

Particularly Useful Sections

Sec. 341.013(c) covers most public health nuisances; widely used by law enforcement:

*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.***

[So if an officer observes a situation where mosquitoes, insects, or rats are breeding or present, this is often the best law to begin with. Note that almost all illegal dumping violations (#4 below) also include a violation of this section.]

Sec. 341.011(7) specifically addresses mosquitoes:

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

Sec. 341.019. MOSQUITO CONTROL ON UNINHABITED RESIDENTIAL PROPERTY.

(a) Notwithstanding any other law, a municipality, county, or other local health authority may abate, without notice, a public health nuisance under Section 341.011(7) that:

(1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and

(2) is an immediate danger to the health, life, or safety of any person.

(b) A public official, agent, or employee charged with the enforcement of health, environmental, or safety laws may enter the premises described by Subsection (a) at a reasonable time to inspect, investigate, or abate the nuisance.

(c) In this section, abatement is limited to the treatment with a mosquito larvicide of stagnant water in which mosquitoes are breeding.

(d) The public official, agent, or employee shall post on the front door of the residence a notice stating:

(1) the identity of the treating authority;

(2) the purpose and date of the treatment;

- (3) a description of the areas of the property treated with larvicide;
- (4) the type of larvicide used; and
- (5) any known risks of the larvicide to humans or animals.

THSC Chapter 341 is in force now throughout the state. Local cities and counties do NOT have to “adopt” this law before it can be used; it’s already in force, like state burglary laws.

Considerations:

- (1) Police, deputies, and prosecutors are often unaware of this law;
- (2) May also be enforced by citation by Local Health Authority [see: THSC Sec. 121.003(c)] in unincorporated areas;
- (3) No notice to the violator is required before a citation can be issued (note: this law may be confused with THSC Chapter 343, which is used only in certain unincorporated areas AND which **requires a 30-day notice** by the county prior to enforcement ... don’t confuse the two laws);
- (4) There are actually **two parts** of the enforcement process. Local Health Authorities can do both and often confuse them; peace officers can only do (a):
 - (a) **Criminal Enforcement:** Peace officer or health department issues a citation for the violation (leads to an appearance before a JP or municipal judge for punishment);
Problem with Criminal Enforcement: This law is silent on the judge’s power to order an abatement, so most won’t issue such an order. If your judge does, bring this issue to his attention privately.
 - (b) **Nuisance Abatement:** Health Authority and local prosecutors follow the provisions of THSC Sec. 341.012 to manage the abatement process
Problem with Nuisance Abatement: Local Health Authorities usually fail to follow the process mandated by law, which actually slows down nuisance abatement;
- (5) Consider approach used by some jurisdictions: Issue a citation on first visit; hold charges for two weeks; if violator calls reporting the problem to be fixed, verify, quash the charges; otherwise process. This avoids follow-up on warning tickets by officer and puts responsibility on violator to contact you. Also, subsequent offense within one year carries 30 days in jail; some officers arrest for re-offense within that year.

3. Public Nuisance in MOST Unincorporated Areas

(NOT including “agricultural” land and several other rural places)

THSC Chap. 343. Abatement of Public Nuisances

- Note that these violations are not “public HEALTH nuisances”;
- Fine of \$50 to \$200;
- Subsequent conviction at any future date: \$200 to \$1,000 and/or 6 months jail;
- Enforced By: Peace officers; Local Health Department; County employee trained by health authority;
- Defines 13 common rural public nuisances; all require 30-day notice from county before enforcement;
- Use IN ADDITION to THSC Chapter 341; or use ONLY THSC Chapter 341.

Commonly used provisions for dumping:

THSC Sec. 343.011(c) A public nuisance is (not all 12 definitions are shown):

- (1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;*
- (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;*
- (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;*
- (12) discarding refuse on property that is not authorized for that activity.*

Definitions (see this law for more):

"Neighborhood" means: (A) a platted subdivision; or (B) property contiguous to and within 300 feet of a platted subdivision.

"Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

"Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

"Rubbish" means nondecayable waste from a public or private establishment or residence.

Considerations:

- (1) Deputies, constables, and prosecutors are usually unaware of this law;
- (2) **This one law requires 30-day notice from the county before a violation actually occurs;**
- (3) When counties use this law, they often forget about using THSC Chapter 341 also;
- (4) This law doesn't work for most sewage and other "public nuisances" that need immediate attention; 30 days may be too long to wait for action (for example, if scrap tires are holding water where mosquitoes can breed, allowing this to continue for 30 days during a notice period is ignoring the health issues; use THSC Chapter 341 in these cases);
- (5) One very good feature: Judge's order to abate the nuisance is mandatory upon conviction (whereas THSC Chapter 341 is silent on this point).

Because of the mandatory 30-day notice prior to enforcement, THSC Chapter 343 is probably of LIMITED VALUE in dealing with sewage, mosquitos breeding places, and other forms of pollution that are an immediate problem.

Use THSC Chapter 341 whenever you can since there is almost always a violation of THSC Sec. 341.013(c) involved when you are considering using THSC Chapter 343.

4. Illegal Dumping onto Land and into Water (Applies everywhere in Texas)

THSC Chap. 365. Litter

- Enforced By: Peace officers;
- Sets a penalty of Class C, B, or A Misdemeanor or State Jail Felony based on weight or volume dumped (see chart on last page — note that higher fines are authorized for non-individual violators);
- Applies to public and private property; includes disposal, receiving, and hauling activities;
- Section 365.012(j) applies the same penalties to dumping waste in someone else's dumpster without their permission (easier to use than the "Theft of Services" provisions in Penal Code Sec. 31.04);
- Officers should work through the provisions of Sec. 365.012(k) that allow temporary storage of waste prior to its disposal. The word "temporary" is not defined in the statute and will differ from situation to situation.
- This particular law cannot be used for *oil and gas waste* (all the others can).

Those are probably all the laws most local jurisdictions will use.

But SOME situations and locations will also need the following:

5. Felony Water Pollution

Texas Water Code Sec. 7.145. Intentional or Knowing Unauthorized Discharge.

- Enforced By: Peace officers;
- Note the use of defined terms in the law: definitions are in TWC Chapter 26;
- Penalty for Individual: \$1,000 to \$100,000 and/or confinement to 5 years;
- Penalty for Non-Individuals: fine \$1,000 to \$250,000;
- Includes dumping oil and gas waste **into or adjacent** to "water" from a "point source" (including a truck) without a permit;
- Each day the discharge is present in the "water" can be a separate violation.

6. Misdemeanor Water Pollution

TWC Sec. 7.147. Unauthorized Discharge.

- Enforced By: Peace Officers;
- Penalty for Individual: \$1,000 to \$50,000 and/or confinement to 1 year;
- Penalty for Non-Individuals: fine \$1,000 to \$100,000;
- Includes dumping oil and gas waste **into** "water" that pollutes or threatens to pollute the water (will require water testing);
- Each day the discharge is present in the "water" can be a separate violation.

7. Basic Oil and Gas Waste Hauling Violations

TWC Chapter 29. Oil and Gas Waste Haulers

- Enforced By: Peace Officers
- Low penalties: \$100 to \$1,000 and/or 10 days in county jail
- Basic violations include:

- Sec. 29.041. Hauling Oil and Gas Waste (off-lease for disposal) Without a RRC-Issued Waste Hauling Permit.
- Sec. 29.043. Using Haulers Not Having a Valid WHP.
- Sec. 29.044. Disposing Oil and Gas Waste in Unauthorized Location
- Sec. 29.045. Using Unmarked or Incorrectly Marked Vehicles to Haul Oil and Gas Waste

8. Any Violation of 16 T.A.C. Sec. 3.8 Water Protection (“Statewide Rule 8”)

Criminal violation: Texas Natural Resources Code Sec. 91.002

- Enforced By: Peace Officers
- Venue is County where violation happens
- Fine is to \$10,000 per violation
- Multiple violations in one situation are common

9. Additional TWC Chapter 7 (Subchapter E) Criminal Violations

- Water pollution; medical waste; hazardous waste; used motor oil; lead-acid (car, boat, motorcycle) batteries; illegal outdoor burning; other laws
- Misdemeanor and felony violations for most things with **extremely high fines** and moderate terms of confinement
- Enhanced for subsequent convictions and/or endangerment or harm to others
- Examples:

HAZARDOUS WASTE VIOLATIONS

Sec. 7.162(a)(1) - Transportation violations

Individual: \$1,000 to \$50,000 and/or 10 years confinement

Other than individual: \$1,000 to \$250,000

Sec. 7.162(a)(2) - Storage violations

Individual: \$1,000 to \$50,000 and/or 10 years confinement

Other than individual: \$1,000 to \$250,000

Sec. 7.162(a)(7) - Release into the environment

Individual: \$1,000 to \$100,000 and/or 1 year confinement

Other than individual: \$1,000 to \$250,000

Sec. 7.163 The same sorts of violations, with added endangerment elements

Penalties range from \$1,000 to \$500,000 or more and/or 15 years confinement

MEDICAL WASTE VIOLATIONS

Sec. 7.164 Various violations by large quantity medical waste generators

Individual: \$1,000 to \$50,000 and/or 10 years confinement

Other than individual: \$1,000 to \$50,000

Sec. 7.165 Similar violations by small quantity generators

Individual: not more than \$1,000

Other than individual: \$1,000 to \$50,000

USED MOTOR OIL VIOLATIONS

Sec. 7.176 Improper discharging used motor oil

Individuals: \$1,000 to \$50,000 and/or 5 years confinement

Other than individual: \$1,000 to \$50,000

Fines triple for subsequent conviction

LEAD-ACID BATTERY VIOLATION

Sec. 7.185 Knowing or intentional unauthorized disposal

Individual: Class A Misdemeanor

Other than individual: Use Penal Code Sec.12.51 to fine to \$10,000

ILLEGAL OUTDOOR BURNING - FELONY

Sec. 7.183 Intentional Or Knowing Emission of Air Contaminant and Knowing Endangerment

Individual: Individuals: \$2,000 to \$500,000 and/or 5 years confinement

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

Sec. 7.182 Reckless Emission of Air Contaminant and Endangerment.

Individual: Individuals: \$1,000 to \$250,000 and/or 5 years confinement

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

ILLEGAL OUTDOOR BURNING - MISDEMEANOR

Sec. 7.177 Violations of Clean Air Act

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

The Rule violated: Outdoor Burning Rule

[30 T.A.C. Sec. 111 (Subchapter B)]

Penalties: Contradictory; Discuss with County Attorney

THSC Chapter 365 Illegal Dumping Penalties

[Related to Section 4 Above]

I. Dumping Not Done for Commercial Purpose (i.e., “The purpose of economic gain”)

- | | |
|---|---|
| (a) 5 pounds or less; or, having a volume of 5 gallons or less | <u>Class C Misdemeanor</u> (fine to \$500);
(If done by corporation or association: Fine to \$500 under Penal Code Sec. 12.51) |
| (b) Over 5 pounds but under 500 pounds; or, over 5 gallons but under 100 cubic feet | <u>Class B Misdemeanor</u> (fine to \$2,000 and/or confinement to 180 days);
(If done by corporation or association: Fine to \$10,000 under Penal Code Sec. 12.51) |
| (c) 500 pounds but under 1,000 pounds; or, 100 cubic feet but under 200 c.f. | <u>Class A Misdemeanor</u> (fine to \$4,000 and/or confinement to 1 year);
(If done by corporation or association: Fine to \$10,000 under Penal Code Sec. 12.51) |
| (d) 1,000 pounds or more; or, 200 c.f. or more | <u>State Jail Felony</u> (fine to \$10,000 and/or confinement of 6 months to 2 years);
(If done by corporation or association: Fine to \$20,000 under Penal Code Sec. 12.51) |

II. Dumping Done for Commercial Purpose

- | | |
|---|---|
| (a) 5 pounds or less; or 5 gallons or less | <u>Class C Misdemeanor</u> (fine to \$500);
(If done by corporation or association: Fine to \$500 under Penal Code Sec. 12.51) |
| (b) Over 5 pounds but under 200 pounds; or, over 5 gallons but under 200 c.f. | <u>Class A Misdemeanor</u> (fine to \$4,000 and/or confinement to 1 year);
(If done by corporation or association: Fine to \$10,000 under Penal Code Sec. 12.51) |
| (c) Over 200 pounds; or, 200 c.f. or more | <u>State Jail Felony</u> (fine to \$10,000 and/or confinement of 6 months to 2 years);
(If done by corporation or association: Fine to \$20,000 under Penal Code Sec. 12.51) |

III. Dumped for Any Reason (Commercial or Non-Commercial)

- | | |
|--|---|
| (a) Any amount of waste in a closed drum or barrel | <u>State Jail Felony</u> (fine to \$10,000 and/or confinement of 6 months to 2 years);
(If done by corporation or association: Fine to \$20,000 under Penal Code Sec. 12.51) |
|--|---|