



Legislative / Legal Update  
Related to the  
Profession of Code Enforcement

Online Class TIDRC001

Companion website: <http://www.tidrc.com/onlinelegal.html>

Approved by Department of State Health Services  
One Continuing Education Unit

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**LEGISLATIVE / LEGAL UPDATE**  
**RELATED TO THE PROFESSION OF CODE ENFORCEMENT**  
TIDRC001

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**Welcome**

Welcome to the class *Legislative / Legal Update Related to the Profession of Code Enforcement (TIDRC001)*. This class provides basic information about the changes — and attempted changes — made by the 85<sup>th</sup> State Legislature concerning related environmental violations. This class will take about an hour to read and complete the simple test.

We will focus on changes made to several key laws used around the state by local enforcement officers:

1. Texas Health and Safety Code Chapter 341 — Dealing with public health nuisances anywhere in the state;
2. THSC Chapter 343 — Dealing with public nuisances (note the word “health” is missing from these) in various parts of the unincorporated areas of the state;
3. THSC Chapter 365 — Dealing with illegal dumping enforcement statewide;
4. Texas Water Code Chapter 7 (Subchapter E) — Dealing with water pollution and other forms of pollution (such as illegal burning, hazardous waste, medical waste, used motor oil and other specialized dumping, transportation, storage and related mishandling);
5. TWC Chapter 29 — Dealing with several primary violations by haulers of oil and gas waste statewide; and.
6. Texas Natural Resources Code Chapter 91 — Dealing with additional violations of Texas oil and gas waste handling (and other related things) statewide.

These six laws — along with municipal code enforcement — are the primary tools used by local governments to control pollution. These are all criminal laws; all are currently in force in Texas. Violations of these are enforced by local police, deputies,

constables, specialized environmental officers, and other sworn peace officers throughout the state. Those dealing with public health can also be enforced by health departments in various parts of the state. But with or without a health department, all of these can be enforced by local peace officers.

Your particular police department or sheriffs office may not be enforcing all — or ANY — of these. But that can be changed; more and more local agencies are discovering that protecting citizens from pollution is primary a LOCAL undertaking. The state simply does not have the resources — and in some cases the inclination — to enforce these criminal laws everywhere. That's a job for local government.

There's a test to be passed after going through this material. Passing score is 70% and you can take it as many times as you need. It's open-book, so you will be free to use this and any other material you like in taking it.



My name is John Ockels, and I'll be your instructor for this class. I'm the director of the Texas Illegal Dumping Resource Center, and I've been teaching the subject of general illegal dumping enforcement for about 20 years. Please direct your comments and corrections to me at [ockels@tidrc.com](mailto:ockels@tidrc.com). I'm pretty much available all the time, so please don't be shy about contacting me.

At TIDRC our mission is helping Texas cities and counties get better at responding to illegal dumping and other kinds of local pollution, including dealing with oil and gas waste, illegal outdoor burning, and water pollution. We've presented hundreds of day-long classes around Texas over the past seven years. If you haven't attended one, I'd encourage you to do so. They're a lot of fun, you earn Continuing Education credits, and you might even learn something useful to you and your city, county, or district. You can find out more about our in-person classes elsewhere on the TIDRC.com website. If you want to host a class in your community, just drop me an email and maybe it makes sense for both of us. At this time, this particular class is available exclusively in this online format.

We also provide DSHS-approved online classes in several other subjects — *Illegal Dumping Enforcement; Local Control of Oil and Gas Waste; Illegal Outdoor Burning; Local Control of Scrap Tires; Enforcing Health Nuisance Laws; Ethics of Local Enforcement* — and this one in *Legislative / Legal Update Related to the Profession of*

*Code Enforcement.* Because this is a class that everybody has to have prior to certification renewal, this is our most popular online class. However, officers taking this class usually decide to take others.

Our plans for 2017 and beyond include providing more of these online classes to help you stretch your overall training dollar and save you time. Also, check into our Continuing Student program (there's a link on the TIDRC.com home page). This program enables you to access all TIDRC online classes for one low annual fee.

TIDRC has been providing in-person classes since 2008. In April of 2011 we were authorized by the Texas Department of State Health Services to add online continuing education classes to our in-person programs. If you need a copy of that authorization for your records, just let us know.

We've spoken with representatives from Texas Department of Licensing and Regulation about the transition in state management of code enforcement and registered sanitarian programs; no immediate changes with any of the education rules are contemplated, according to TDLR.

## **Conventions**

Throughout this class "TWC" will refer to the Texas Water Code; "THSC" will refer to the Texas Health and Safety Code; "NRC" will refer to the Texas Natural Resources Code; "TCEQ" will refer to the Texas Commission on Environmental Quality; "RRC" will refer to the Railroad Commission of Texas; and, "TPWD" will refer to the Texas Parks and Wildlife Department. Both the TCEQ and TPWD, but not the RRC, maintain extremely effective, but small, Environmental Crimes Units ("ECUs").

All Railroad Commission enforcement is administrative; they got out of the criminal enforcement business many years ago.

If you need to access copies of the laws, we maintain current versions on the TIDRC.com website. Look under the "Laws" tab on the top menu bar.

*When we quote a section of law or rules, it will always be in 12-point Times New Roman font (looking like this).*

## **About the Class**

*Legislative / Legal Update Related to the Profession of Code Enforcement* is an interesting class in that there is no specific content required by the State Legislature or

DSHS. The agency regulation (25 Texas Administrative Code Sec. 140.168 Continuing Education) that affects you and this class states:

*(c) Each registered code enforcement officer and code enforcement officer in training must obtain and show proof of not less than six continuing education hours as set forth in this section within the twelve months preceding renewal of a registration issued for one year; or not less than 12 continuing education hours as set forth in this section within the 24 months preceding renewal of a registration issued for two years, at least one hour of which must be in legal/legislative issues as provided in subsection (j)(12) of this section.*

Subsection (j)(12) simply gives the name of the class: *legislative or legal updates related to the profession of code enforcement*, but does not specify any particular topics or content to be covered. Consequently, as long as the content of the class has to do with either *legislative updates* or *legal updates*, then the class is in compliance.

In addition to giving you an update on the activities off the recent legislature, this particular class will provide you with a general overview of the ways state administrative rules, local ordinances, state criminal laws can work together to fight local polluters.

In addition to these new laws, cities continue to face such things as staff reductions from budget pressures, the increase of stress and mental illness among our customer base, and continued verbal attacks on government workers from politicians who don't or refuse to understand the value of public sector employees — until they personally want something done, that is. I've even met government workers who themselves professed to believing in limited government — except on pay day, of course.

Some of these issues are discussed in depth in our online class called *Ethics of Local Enforcement (TIDRC006)*. When we ask code enforcement officers and registered sanitarians around the state — and police officers too — what the primary ethical issue they face every day is, they tell us, "Not treating everybody the same." Sometimes this is because the officer himself is prejudiced, but more often its because the officer is receiving pressure from elected official or his/her bosses to ignore some violations by some violators — or be particularly harsh in other situations. What's the primary ethical issue you deal with in your job? Drop me an anonymous email and let me know ([ockels@tidrc.com](mailto:ockels@tidrc.com)).

So yours is not an easy task, and we hope that this short class will not only give you a way to help satisfy a state education requirement, but also actually give you some useful information that will make your job a little easier to do.

## Actions of the 85<sup>th</sup> State Legislature

Before moving too far into the class, let's take a look at the actions of the 85<sup>th</sup> State Legislature, which completed its business on May 29, 2017.

### Veto on Scrap Tire Control Bill ...

The big news was the veto by Governor Abbott of SB 570, after it had been passed 20-11 in the Senate and 114-30 in the House. But one guy didn't like it, and since there is no opportunity to consider overriding the veto, the bill is dead. This would have added additional criminal enforcement powers for city and county governments — and the state too — to deal with scrap tires. Maybe next session. I remember saying that *last* session too. Humm.

### ... But More Rational Sentencing for Illegal Outdoor Burning

The other significant bill that DID become law was HB 1619, which becomes effective September 1st and will make the sentencing structure for misdemeanor outdoor burning simpler to use.

### And Two Important Laws Were Not Changed

Two important laws local enforcement uses — Texas Water Code Chapter 29 (criminal penalties for Oil and Gas Waste Haulers) and Health and Safety Code 343 (Abatement of Public Nuisances in unincorporated areas) — were unchanged.

Here's the rundown on specific legislation:

#### **SB 570 — Control of Scrap Tires**

Relating to the regulation of the retention, storage, transportation, disposal, processing, and reuse of used or scrap tires; providing a civil penalty; creating a criminal offense.

Outcome: Passed by Texas Senate and House; Vetoed by the Governor.

Comment: This was a very bad move by the Governor, in my opinion. This bill would have added a criminal penalty, that could be enforced locally, to many of the administrative violations in the current state scrap tire rules. Since we generate about one scrap tire per person per year in Texas (that's around 26 million this year), and Texas will have around 50 million people in 35 years, local governments need everything they can have to control this waste. The Governor's statement on his veto is:

Senate Bill 570 criminalizes the violation of administrative rules governing the proper disposal of tires. In order to know whether their handling of used tires is a crime or not, Texans would have to consult the Texas Register and the actions of local governments on a regular basis to ensure the rules governing tire disposal have not changed. Surely there are better ways to address the problem of old tires than by creating a new and vaguely defined crime. [<https://gov.texas.gov/news/post/governor-abbott-vetoes-sb-570>]

That's right. In order to know what a crime is, Texans would have to read the current scrap tire rules, just like they successfully do now to see what constitutes illegal outdoor burning (they read the Texas Outdoor Burning Rule) and what they successfully do now to determine what constitutes a criminal violation under NRC Sec. 91.002 (they read the oil and gas waste hauling rule at 16 TAC Sec. 3.8). But reading rules becomes just too hard for Texans when it comes to controlling scrap tires. A more coherent reason for the veto is that the successful bill originated from Sen. Rodriguez (Democrat, El Paso).

#### **HB 1884 — Community Service for Illegal Dumping in Montgomery County (Only)**

Relating to the penalties for certain littering offenses. Up to 60 community service hours may be imposed for convictions of illegal dumping and for burning trash in certain areas of Montgomery County. The original law had mandated a full 60 hours; this change gives the judges there more flexibility.

Outcome: Effective on September 1st.

Comment: Makes sense; the earlier law specified exactly 60 hours be ordered, so this gives the judges more options.

#### **HB 1619 — Illegal Outdoor Burning Sentencing**

Relating to the prosecution and punishment of certain outdoor burning violations. First offense violations of the provisions of the Texas Outdoor Burning Rule are to be punished as Class C Misdemeanors; convictions for subsequent violations of this rule are designated as Class B Misdemeanors; burning certain prohibited materials is treated as a Class A Misdemeanor.

Outcome: Effective on September 1st

Comment: Great idea; The prior sentencing of \$1,000 to \$50,000 and/or six months in jail was too harsh to be used by most officers.

#### **HB 2533 — Limits on Civil Suits by Cities and Counties**

Relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or

permits issued by, the Texas Commission on Environmental Quality. This law will continue to tighten the rules under which cities and counties can sue violators of various state environmental laws. Essentially the TCEQ now gets a 90-day window within which it can undertake a civil or administrative action against the alleged violator before locals could bring action. If the state undertakes a civil or administrative action within that time period for any aspect of the alleged violation, the city or county cannot proceed with its suit.

Outcome: Effective on September 1st.

Comment: Probably of consequence only to attorneys who make their money by suing companies on behalf of cities and counties, although it's another example of the state further limiting the powers of cities and counties (which, it is correct to say, are themselves political subdivisions of the state).

### **SB 567 — Increased Penalties for Oil and Gas Waste Hauling Violations**

Relating to the imposition of administrative, civil, and criminal penalties for violating certain statutes under the jurisdiction of, rules or orders adopted by, or licenses, permits, or certificates issued by the Railroad Commission of Texas; increasing criminal penalties. This bill would have increased the criminal penalty for violating rules such as the one under which the RRC issues waste hauling permits to \$25,000 from the current \$10,000 as well as other administrative penalties. With the failure of this bill, all fines and penalties remain as they are.

Outcome: Bill failed to pass.

Comment: Increased penalties would have provided more choices for judges, but this provision is badly underused even at \$10,000; more attention to its value is a good used.

### **SB 1870 — Glass Containers in Riverbeds**

Relating to county prohibition of the possession of glass containers within the boundaries of a state-owned riverbed; creating an offense. Attempt to spread to all counties upon commissioners approval failed. The law continues to affect Uvalde County only.

Outcome: Billed failed to pass.

Comment: Keeping glass containers away from rivers is a good idea, but I can think of bigger enforcement issues ... such as actually trying to stop scrap tire movement and dumping.

### **More on Scrap Tires**

Our thanks to Sen. Rodriguez from El Paso for getting this bill as far as he did. Last

session a similar bill didn't even get to the Governor's desk, so this one made progress. But Texans will continue to generate about one scrap tire per person per year. As more are dumped and make great homes for mosquitoes, some subsequent Governor will eventually sign a bill such as SB 570 into law.

In the meantime:

1. Learn the rules the TCEQ uses controlling scrap tires (take our class *TIDRC008 Local Control of Scrap Tires*);
2. Keep on enforcing your municipal codes controlling scrap tires;
3. Report all violations of state rules to regional TCEQ offices for administrative enforcement; follow-up and use your political leaders to insist on enforcement;
4. Encourage police and deputies to treat dumped scrap tires as any other form of illegal dumping under THSC Chapter 365; and,
5. Encourage police, deputies, and health department staff to use THSC Sec. 341.013(c) to cite possessors of any scrap tires for public health nuisance violations where mosquitoes or other vermin are breeding.

As more piles of scrap tires appear in stranger places — such as dumped in abandoned houses and stored and abandoned in storage lockers — please send descriptions and pictures. Thanks in advance for that.

### Enforcement Overview



Local code enforcement is the tip of the overall enforcement spear, but codes can not do everything. For example, if a person were to dump ten scrap passenger tires on somebody's lawn, local code enforcement would start — and most likely end — by

forcing the homeowner to remove the tires from his lawn. Abating the mess would be paid for by the homeowner, who would be told that no matter where the waste originated, a person cannot have refuse on his or her property.

But ten scrap tires weigh over 200 pounds and their dumping would most likely constitute a state jail felony under THSC Chapter 365. So who in the city is responsible for responding to felonies? Certainly not the code enforcement department. The truth is that unless local law enforcement knows and applies the Texas anti-pollution laws, this sort of dumping will easily continue. In too many cities in Texas the police continue to not know these anti-pollution criminal laws so they don't respond. Or perhaps police management has been able to convince the city bosses that controlling such dumping is strictly the business of the code enforcement department.

The more you know about all aspects of local enforcement — what other tools are available — the better off you and your city will be. For sheer volume of work, however, code officers are the primary anti-pollution enforcement team in Texas. Moreover, code officers are in the unique position of knowing just about everything that's happening in a city. Consequently, they are in a great position to spot situations that may be effectively handled through these other approaches when using codes just won't work.

There are four major sources of *local* environmental enforcement. They are:

- (1) code enforcement;
- (2) *public health nuisance* and *public nuisance* enforcement by peace officers and local health authorities (if they are available);
- (3) criminal law enforcement by local peace officers; and,
- (4) major civil suits by cities and counties where the pollution is happening. Note that this is less and less a viable option for local governments, especially following the passage of HB 2533 (see above).

We'll also briefly discuss administrative enforcement by the state, but only to distinguish it from the enforcement available to local governments. Only state government can directly enforce state administrative codes; however, some cities adopt specific parts of some administrative rules as local municipal codes. Generally, this works well.

What DOESN'T work so well is for cities to adopt state CRIMINAL laws as local municipal codes. This often leads to such weird situations as treating what would be a felony (if state criminal law was enforced by local police) as a municipal code violation.

Be very careful that you are achieving the goals you are seeking when you attempt to adopt a state criminal law as a municipal code violation with a much lower penalty.

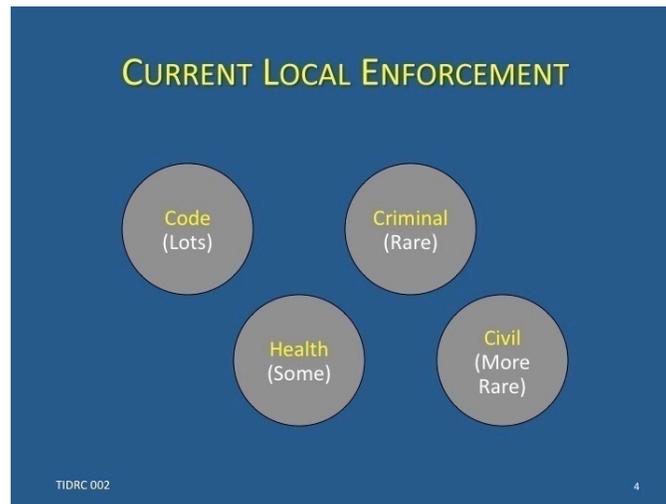
As to item (4), it's a little known fact that Texas cities and counties have the same civil suit powers available to them as the state Attorney General's Office in responding to most environmental violations. These powers are given to cities and counties in the Texas Water Code at Section 7.351. It's very likely that your city attorney and county attorney are unaware to these powers. Because the possible penalties have been so high, business interests have pushed back against cities and counties having these suit powers. The 84<sup>th</sup> State Legislature made some changes to the way any proceeds from environmental civil suits are divided: the state and local government equally divide the first \$4.3 million in settlement awards; the state retains any amount over the first \$4.3 million. The 85<sup>th</sup> State Legislature has further limited city and county ability to successfully sue environmental violators, probably to the point that this once viable option is no longer a realistic alternative.

Under HB 2533, after September 1, 2017, a city or county wanting to sue an entity would have to notify the TCEQ and the Attorney General in detail of all the allegations and the relief the local government is seeking. If, within 90 days of receiving notice, the TCEQ undertakes an administrative action against the accused party for any one of the allegations or if the Attorney General brings suit on any one of the alleged violations, the city or county may not continue with their suit. That should pretty well remove the use of suits by local governments from the local enforcement playbook.

All four of these enforcement activities take place locally, and code enforcement is the starting point (inside a city). If a city has a good code enforcement program, it has made an excellent start. Of course, that means that environmental enforcement, by definition, is more difficult in the unincorporated areas for the simple reason that there are no municipal codes that can applied out there.

Out in the country, the starting point is state criminal anti-pollution law (which few officers know) enforced by deputies, constables, fire marshals, specialized environmental enforcement officers, and designated local health authority staff.

Inside the city, code enforcement, local police and other certified peace officers having jurisdiction, and designated health department staff have the enforcement powers. But the greatest amount of environmental enforcement in Texas comes from the code enforcement officers.



Unfortunately, enforcement in most cities looks something like the above chart. Local officers may be doing a great job on code enforcement, and the local health department (if there is one) may be handling some complaints as health nuisance violations. In addition, city police and other law enforcement officers may be enforcing state criminal laws against illegal dumping and water pollution every once in awhile, and your city or county may even sue a polluter occasionally (although this would be very rare — so far limited to about twenty cities and counties across the state).

But these activities often happen independently of each other, as if the others didn't exist. So a community may easily find itself simply using the "wrong tool" in a particular situation.

For instance, trying to stop major illegal dumping by use of municipal codes alone generally doesn't get very far. The application of criminal laws is needed. Moreover, if an outside company decides to dump on your community, to save money, then the right approach may be to sue them for immediate cleanup and the payment of major civil penalties — to the degree that this approach remains viable. After all, if a company dumps to save money, why not educate them to their errors by taking even more money from them? Most cities still are not aware that they have such civil suit powers since (1) city attorneys are not exposed to this material in law school, and, (2) few of their colleagues at other cities have ever used these provisions. Note well the limitations now imposed by HB 2533 on the use of local suits.



This diagram shows where you are actually trying to get through smart local enforcement policies. In this approach, cities use the right enforcement approach to solve the particular problem they face, effectively and efficiently. All of these functions are in close communication with each other every day.

Note that the point of coordinated environmental enforcement is to make it more likely that the polluter would pay for the cleanup rather than a property owner (who may have been dumped on), a third party, or the taxpayer. Of course, communities could do nothing about dumping and other forms of pollution. In this case the entire community pays; failing to abate public health nuisances — which virtually all dumping creates — enables the spread of disease in any community.

It's a very interesting question, actually: *What approach should a city or county take to solve an environmental problem?* For example, if a company dumps a load of trash — twenty passenger car tires, for instance, with a total weight of about 440 pounds — on a lot in the city, next to a little creek, how should the city proceed? The dumping is simultaneously a violation of:

1. Codes prohibiting “refuse on a lot” or “placing refuse on a lot” [civil penalty to \$500 or even \$4,000 in some cases, thanks to the 84<sup>th</sup> State Legislature increasing the maximum penalty a city can apply];
2. THSC Chapter 341 (enforceable by health department or police officers) [fine of \$10 to \$200 for first offense] ;
3. THSC Chapter 365 prohibiting illegal dumping (at the state jail felony level) [for individual: fine to \$10,000 and/or confinement from 6 months to 2 years; for company or association: fine to \$20,000];

4. Texas Water Code Sec. 7.145, felony water pollution [for individual: fine of \$1,000 to \$100,000 and/or confinement to 5 years; for company or association: fine to \$250,000; each day of a continuing violation can be a separate charge].

## Enforcement Options

**Texas Environmental Enforcement Options**

	# Cases	Case Categories	Enforced By	Violations	Attorneys	Court
Civil	Very Few	<b>Major Civil Violations</b> To \$25,000 per day; 1/2 of civil penalties stay local	Your city or county attorney files suits in District Court or State Attorney General	<b>Authority: TWC 7.351</b> THSC Chapter 361 THSC Chapter 382 TWC Chapter 26 Several other chapters and rules, permits, orders issued	Your County Attorney or City Attorney files suit; State included as necessary party	District Court
Criminal	Few	<b>Felonies</b> > 1 year; \$10,000+	Your police department; county sheriff; other peace officers	TWC Chapter 7 THSC Chapter 365	District Attorney	District Court
	Many	<b>Class A Misdemeanors</b> 1 year; to \$4,000		THSC Chapter 365 TWC Chapter 7 (few)	County Attorney	County Court
	Many	<b>Class B Misdemeanors</b> 6 mos; to \$2,000	TCEQ Environmental Crime Unit	THSC Chapter 365 TWC Chapter 7 (few)		
	Very Many	<b>Class C Misdemeanors</b> To \$500	TPWD Env Crimes	<b>Oil and Gas Waste</b> TWC Chap 29 Nat Res Sec. 91.002 + Statewide Rule 8	File directly with JP; County Attorney presents case	Justice Court or Municipal Court
Health	Very Many	<b>Health Nuisance Violations</b> Civil/criminal to \$200 Subsequent to \$1,000	Your Health Department; police department; county sheriff	THSC Chapter 341 THSC Chapter 343	File directly with JP; County Attorney presents case; City Attorney	Justice Court or Municipal Court
Code	Few	<b>Code Violation Injunctions</b>	Your city	Local Government Code Sec 54.016	City Attorney	District / or Co Court
	Most of All [400,000 yr]	<b>Municipal Code Violations</b> To \$500 Some to \$2,000	Municipal code enforcement	Municipal Codes (similar, but unique for each city)	City Attorney	Municipal Court
Admin	Some	<b>Administrative Rule Violations</b>	TCEQ Administrative	State Rules	N/A	N/A
<b>Remember: Administrative enforcement is NOT local enforcement!</b>						

Source: Texas Illegal Dumping Resource Center (www.tidrc.com)

Additional information: ockels@mac.com

So instead of “There’s nothing we can do,” the issue becomes “What should our approach be to solving this problem?” Should the code enforcement officer — usually the first person to see the violation — treat this as a code violation? If dumping tires is a regular activity of this company, using codes alone will seldom be effective.

There are two overall problems facing cities and counties wanting to use the most effective tool:

1. Generally the officers and attorneys involved simply don’t know all of their options ... this wasn’t studied in police academies and law schools; and,
2. The elected officials haven’t faced the basic policy decision of setting a local enforcement policy.

Both of these problems can be solved. The first of these requires some study; the second involves some meetings. The above chart shows the five approaches that state and local governments can take to solving environmental pollution problems. If this chart is a little too small to read, or if you want to retain a reference copy, just click here [Local Enforcement Options Reference Chart](#). There are other resources at [www.tidrc.com/resources.html](http://www.tidrc.com/resources.html) that you might find useful, including various enforcement Field Guides and longer policy readings. Feel absolutely free to make copies of this chart and distribute it to your colleagues.

The rest of this class will focus on understanding each of the options shown on the chart. Note that the names of the five approaches are shown on the left side of the chart, written in rotated letters. Working from the bottom to the top:

**Admin** refers to the enforcement of Texas Administrative Code by the **administrative** officers of the Texas Commission on Environmental Quality. This is the only type of enforcement shown here that *cannot* be done by local authorities. Your city or county can sue a rule violator under your power at TWC Sec. 7.351, but you can't directly enforce the administrative rules; only the state can do that. Other agencies enforce other specific sections of the Texas Administrative Code.

**Code** refers to municipal code enforcement by officers in most Texas cities. This is the type of enforcement with which you are probably most familiar. There were 1,211 towns and cities in Texas on the 2010 census, and around 950 are large enough to do some form of code enforcement.

**Health** refers to the enforcement of health nuisance statutes by one of the 64 formally organized local health departments in the state. Note that police, deputies, and other law enforcement officers can also enforce these public health nuisance laws, with or without the presence of a formal health department in the jurisdiction. These laws tend to address the health risks generated by the mess itself, and focus on getting the property cleaned.

**Criminal** refers to local peace officers enforcing various state criminal statutes designed by the state legislature for local governments to use to keep pollution under control. State-level peace officers and staff (including the non-sworn criminal investigators of the TCEQ's Environmental Crimes Unit and the specialized game wardens in the Parks and Wildlife Department's Environmental Crimes Unit) also enforce these laws. But most of this work falls on local peace officers. These laws

focus on the criminal act that resulted in the property becoming a mess, and are not so interested in cleaning the property (although that is often a component of the sentence).

**Civil** refers to local county attorneys and city attorneys using their powers under TWC Sec. 7.351 to sue polluters to make them stop their activities and to pay civil damages (which can amount to \$25,000 per day per violation). **Since the legislature, over the last two sessions, has effectively blocked the use of local government suits against polluters, we're going to stop talking about them. There are experts to whom we can direct you if you want to have your options in a particular situation discussed.**

Texas local governments — cities, counties, and many special districts — can use all of these *except* administrative enforcement. That approach is reserved to the various state agencies. Every city can use all of the other four approaches. Texas counties can use three — Health, Criminal, and Civil — since counties have no municipal codes to enforce. So there are plenty of policy tools available to be used to protect our land, air, and water natural resources and to respond to health nuisance violations.

Also note that a city or county doesn't have to apply these laws in any sequence; multiple approaches are often used simultaneously. For example, if a person has dumped solid waste or litter into or adjacent to water, it is not unusual to see him charged with two crimes: (1) illegal dumping as a violation of THSC Chapter 365; and (2) water pollution as a violation of TWC Sec. 7.145. With both charges in hand, the local prosecutor can have more ways to settle the case with the offender.

The remainder of this class will be a closer look at each of these tools.

## 2. A LITTLE MORE DETAIL

### Administrative Enforcement

This type of enforcement is done *only* by state agencies, such as the Texas Commission on Environmental Quality, the Texas Railroad Commission (oil and gas), and the Texas Parks and Wildlife Department. The enforcement is done by administrative enforcement officers — often called “field inspectors” — whose object is to make sure that violators of state rules come into compliance.

The rules each agency administers are part of the Texas Administrative Code, but

the agency with primary enforcement responsibility for a particular set of rules may use their own designation. For example, the TCEQ enforces what they call “Rule 330 Municipal Solid Waste.” This is the same as Title 30 Texas Administrative Code Sec. 330. Likewise the “Outdoor Burning Rule” — called by the TCEQ “Rule 111 (Subchapter B)” — is enforced administratively by the TCEQ. It is more formally known as 30 T.A.C. 111(Subchapter B). At the Railroad Commission the administrative officers issue Waste Hauler’s Permits to oil and gas waste haulers under what they call “Statewide Rule 8.” This appears in the Texas Administrative Code as Title 16, Section 3.8, and so on.

This means that you can generally find the rules state agencies are administering in two places: (1) in the Texas Administrative Code itself; and, (2) on the web site of the agency having primary administrative enforcement power for that particular rule.

In some cases a violation of a rule is not only an administrative issue to be dealt with by the designated state agency, but it also constitutes a violation of a state criminal statute. These are frequently handled by local law enforcement. Thus a violation of the TCEQ “Outdoor Burning Rule,” which the agency would handle administratively, is simultaneously a violation of Texas Water Code, Sec. 7.177, which, until September 1, 2017, set a penalty of a fine ranging from \$1,000 to \$50,000 and/or a term in jail not to exceed 180 days. After that date, Local peace officers enforce this criminal violation as a Class C, B, or A misdemeanor.

Likewise, a violation of the Railroad Commissions’ “Statewide Rule 8,” which the field investigators and staff of that agency would handle administratively, is simultaneously a criminal violation of the Texas Natural Resources Code, Sec. 91.002. That section sets a fine not to exceed \$10,000 for any violation of the rule. The Natural Resources Criminal violation would be handled by local peace officers in the county where the violation took place. Note that NRC Sec. 91.002 does not allow for confinement, so the violation can be handled in JP or Municipal Court.

SB 570 — which the Governor vetoed — would have set significant criminal penalties for violating various aspects of the scrap tire rule. However, his veto rationale is that this is simply too hard for Texans to figure out.

For the most part, Texas cities and counties are unaware of the criminal violations connected with some of these rules, and assume that only the state agency can respond to violations. Often this is correct as far as administrative enforcement is concerned. Only state agencies can provide this level of response. But in a few

situations, the State Legislature has also given power to local government to apply criminal law to the same administrative violation. So sometimes the violation of an administrative rule is just that; but in some cases the same violation may also constitute a criminal offense. In these situations local police can get involved.

In the case of the TCEQ, the State Legislature has provided very formal ways to make sure that administrative enforcement by the state and criminal enforcement by a city or county don't come into conflict. For example, Texas Water Code Sec. 7.068 provides that once a violator has paid the TCEQ an administrative penalty that agency has set for committing a particular violation, no additional civil or criminal enforcement for that particular violation can take place. So if the TCEQ handles a problem administratively — and the violator actually pays the penalty set by the agency — then local government cannot act to enforce civil or criminal law for that particular violation.

On the other hand, TWC Sec. 7.051 provides that if a local government is suing a violator under its TWC Sec. 7.351 powers — and is actively pursuing the suit — the TCEQ cannot assess an administrative penalty (it can certainly continue with the investigation, but just cannot set a civil penalty while the local government suit is ongoing). Since a penalty cannot be set, a penalty cannot be paid, which payment would trigger the TWC Sec. 7.068. These two statutes — along with good communications between local and state officer — pretty well handle potentially conflictive enforcement situations. With the decline of city and county suit powers, the effectiveness of TWC Sec. 7.051 will be impacted.

The TCEQ is divided into 16 regional offices across the state. Some of these, frankly, are more aggressive in enforcing administrative rules than others. Like just about everybody else in government, all sixteen regions are under severe budget constraints; all are very interested in developing close ties and working closely with local governments who have active enforcement programs.

However, please note that the job of the TCEQ is not to clean-up your community. That's the job of each city and county. If local enforcement doesn't take care of the problem, calling TCEQ is probably not the answer either.

From local government's perspective, the TCEQ's job, and that of the State Legislature, has been historically to empower cities and counties to take care of their citizens by taking care of their air, land, and water resources. We like things that way in Texas, because we're all about local control. Admittedly, not everybody in state

government agrees with this principle.

Of course, not all local officers and elected officials are equally serious about keeping their communities clean and healthy. In fact, I've known county staff who would refer a local environmental problem, well within their power to fix, to the TCEQ just to dodge the responsibility of acting ... knowing full well that the TCEQ wouldn't be able to respond as well as the local officers could, because of time, distance, and travel budget realities. Passing the buck to the TCEQ in an attempt to evade taking responsibility for your community has been morally wrong in the past. Now — especially in the case of scrap tires — pushing state agencies to respond faster may be the right thing to do.

### **Local Code Enforcement**

This is the area that you probably know most about, so I won't say too much. About 950 of Texas' 1,210 cities and towns have some form of active code enforcement. In a couple of hundred cases, a smaller city may have municipal codes, but no municipal court (this can make enforcement difficult).

In some of these unique situations the city has worked a deal with a county constable to enforce Texas health nuisance statutes (THSC Chapter 341) inside the city in JP Court, or worked out some other approach, such as hiring a local JP to work a day or two each month as a municipal judge to hear cases. In other situations, the city has entered into an Interlocal Agreement and is buying enforcement services from some other jurisdiction.



Good as code enforcement is, it may not always get the job done.

Most sets of municipal codes, for example, include violations for a person possessing or owning property to have disposed refuse on the property, as well as separate offenses for the act of disposing the refuse. These ordinances may work well for property owners (and tenants) who dump waste on their own property, but may be worthless when an attempt is made to use them to stop dumping by third parties. That's where using criminal anti-dumping laws can be very useful (and much safer). Of course, if your local police don't know — or currently refuse to use — state criminal laws against dumping, city management will have to instruct the police to act otherwise. Trying to control a mobile illegal dumper with codes is simply using the wrong tool, not to mention a great way to get someone hurt.

### Health Nuisance Enforcement

But using good municipal codes is not the only option local government has: there are also two very useful health nuisance laws that can be used to deal with about the same types of problems as municipal codes. These are Texas Health and Safety Code Chapters 341 and 343. These two laws are used by local health authorities to deal with health nuisances both inside cities and in unincorporated areas. The first of these — THSC Chapter 341 "Minimum Standards of Sanitation and Health Protection Measures" — can be used inside cities and in unincorporated areas alike; the other — THSC Chapter 343 "Abatement of Public Nuisances" — can only be used in unincorporated areas. Both of these laws, and the others discussed below, can be found on the TIDRC website at <http://www.tidrc.com/laws.html>.

Moreover, both of these laws can be enforced by local health departments and by local peace officers (with or without a local health department's involvement). So if you don't have a health department, don't worry about it. Your police or deputies can also enforce these statutes, once they learn to use them. And, again, don't be too quick to say that they won't enforce these laws. The truth is that police and deputies enforce the laws they are directed by their management. So using these laws becomes a matter of local policy decision by the bosses.

Together these two laws can provide a means of having what amounts to code-like enforcement in unincorporated areas by using state criminal statutes.

Of these two, inside Texas cities only THSC Chapter 341 is available, and your police department can use it to reinforce and supplement municipal code enforcement. If a code violator doesn't get the point and won't comply, THSC Chapter 341 is a good

way for the city to make its point more clearly by moving to criminal enforcement. Out in the unincorporated areas of the county the officers get to use both of these statutes.

**Both of these health nuisance laws are already in force right now in Texas, today. There's nothing your city council or commissioners court has to do to adopt them, nor is there anything the city council or commissioners court can do to prevent them being in force.** The State Legislature has already taken care of that. These are the state laws that define basic health nuisances in the state. The only issue is whether your city or county will enforce them. Remember:

Chapter 341 is applicable everywhere in Texas, but Chapter 343 is restricted to the non-agricultural, unincorporated areas of the state.

After reading the provisions of these laws, one extremely useful provisions stands out:

*THSC Sec. 341.013(c)*

*(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.*

Notice the “other waste of any kind” language (which would certainly include the waste materials commonly generated in the oil and gas exploration and production sector). This violation alone will handle many public health situations where the use of a criminal law is a consideration.

The penalty for an individual's first offense for a Chapter 341 violation is a fine \$10 to \$200 and is prosecuted in Justice or Municipal courts; subsequent violations (if they occur within one year of the first conviction) carry penalties of fines \$50 to \$1,000 and/or confinement to 30 days (See THSC Sec. 341.091).

Also, for counties there is, in Chapter 343, a set of procedures that a county can use to abate rural nuisances just like cities abate nuisances through their procedures. If a county wants this additional abatement power, they must first adopt these procedures in commissioners court. And, yes, a county wanting to abate a nuisance structure is bound by the provisions of *City of Dallas v. Stewart* just like cities are. But the criminal portions of Chapter 343 and Chapter 341 are in place, right now, in the unincorporated areas of

all 254 Texas counties. The only policy question is “Will cities and counties use these two criminal laws to help keep the communities clean?”

### **State Criminal Law Enforcement**

The next area of enforcement to discuss is criminal environmental enforcement. Just about any peace officer can enforce these Texas criminal laws, and, of course, most Texas peace officers work for a local government. So that’s where the enforcement action will be. Because of the specialized nature of the offense, some jurisdictions use dedicated environmental enforcement officers to handle these violations, but, with a little training, your city police and county deputies can handle these like they do any other crime.

As you can see from the *Enforcement Options* chart above, the penalties for these violations covers the entire range of "normal" criminal penalties: Class C, B, and A misdemeanors; state jail felonies for illegal dumping violations; and, larger felonies too, for violations of the Texas Water Code Chapter 7 (Subparagraph E). In fact, the fines for many of these Water Code violations can be much, much greater than the standard \$10,000 fine for a felony in Texas.

For example, the penalty for felony water pollution in Texas — covered by Texas Water Code Sec. 7.145 — is a fine of \$1,000 to \$100,000 per day of violation and/or up to five years in prison for an individual violator. For a company or other non-individual violator, the maximum fine increases to \$250,000 per day, per violation. And please don't think these fines are not imposed, because they are.

As the chart shows, there are two major environmental criminal statutes that are used by local officers:

1. Texas Health and Safety Code Chapter 365; and,
2. Texas Water Code Chapter 7 (Subchapter E).

There are also a couple of specialized laws that can be used when the material dumped meets the definition of being oil and gas waste. We’ll discuss that briefly after looking at basic criminal law enforcement.

### Illegal Dumping

The first of these most commonly used laws, **Texas Health and Safety Code Chapter 365**, also called the Texas Litter Abatement Act, covers all aspects of illegal dumping. Here are a couple of pictures that show situations that the Litter Abatement

Act could be used to address. Of course, you could use municipal codes or health nuisance laws to deal with the person dumping the mattress, but neither of them would be useful to address the felony dumping shown in the other picture. This construction/demolition debris dump requires a criminal enforcement response.



The Litter Abatement Act sets a misdemeanor or state jail felony for (1) ***disposing*** or ***allowing the disposal*** of solid waste or litter at a site not approved by the state; (2) ***receiving*** illegally disposed waste; and, (3) ***transporting*** solid waste or litter for unauthorized disposal.

This is a criminal statute and, consequently, can be enforced only by certified peace officers (although code enforcement officers often help the police figure out how to apply this criminal law). The penalties imposed under this law are based on the weight or volume of waste involved, and the law distinguishes between dumping for a *commercial* purpose and dumping for *non-commercial* reasons (although it's hard to think of a situation where dumping doesn't boil down to being done for some economic reason).

This is the most commonly used state criminal law used by cities and counties to control illegal dumping. The definitions of "solid waste" and "litter" used in this law are very broad, but do exclude a few things. For example, waste generated in the exploration or production of oil and gas resources are not covered by this law.

However, if your community is experiencing oil and gas waste haulers dumping and slopping waste onto public roads and other un-permitted locations, your police can't use this particular law; they can, however, use a couple of others mentioned below.

Penalties (mostly based on weight or volume) are found in Sections 365.012(d) through 365.012(g), and are shown in this chart:

#### **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)
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#### Water Pollution and Other Violations

The second useful criminal law we want to mention — **Texas Water Code Chapter 7, Subchapter E** — is commonly used to deal with such problems as water pollution; hazardous waste mishandling and dumping; medical waste mishandling and dumping;

unauthorized disposal of used motor oil; misdemeanor and felony illegal outdoor burning and other such issues.

This subchapter defines about 40 additional criminal violations that are enforced by local police and deputies, so it's very comprehensive. The fines set by this law are the largest in Texas criminal law: up to \$250,000 or even \$500,000 per violation. The State Legislature has decided that individuals and corporations polluting our water and air resources, or mishandling dangerous waste products, should be highly penalized if convicted.

You can read both of these criminal laws at <http://www.tidrc.com/laws.html>.

### Problems with Criminal Enforcement

There are several issues in using criminal enforcement to deal with environmental problems:

1. Local peace officers are generally untrained. Academies that train peace officers almost never provide instruction in dealing with illegal dumping, water pollution, illegal burning, and similar Texas crimes. Consequently, officers are often in the position of simply not recognizing basic environmental crimes when they see them;
2. "We don't do code!" Peace officers are often quick to point out that their job isn't to do basic code enforcement. Generally they are right. However, the environmental laws we're discussing in this section are not municipal codes; they are misdemeanor and felony criminal violations defined by the State Legislature. Once they have been shown what these crimes are, police are generally happy to use that knowledge in their job, when directed to do so by police management;
3. Bosses don't know the policy options. Often local government managers and elected officials — including city attorneys — are simply unaware of the ways that state criminal laws can be used fight local pollution and clean-up a community. Our experience is that once they understand the powers that local government has, elected officials are quick to direct city and county staff to use these laws. After all, when local citizens ask a mayor why a particular law is not being used — the Litter Abatement Act, for example — and the mayor asks the Chief of Police (who has perhaps never heard of that particular criminal statute), then everybody looks silly. Politicians are not always fond of being educated by

members of the public.

4. Prosecutors may not know these laws. Just as peace officers do not learn Texas environmental criminal laws in the police academies, prosecutors certainly don't learn these laws in law school. If an attorney studies environmental law at all, it will most likely be one elective course that focuses on administrative enforcement of federal environmental law. When he or she is hired as a new assistant prosecutor by the County or District Attorney, they may start their career without ever having been made aware of the existence of state criminal laws protecting our land, water, and air. Fortunately, criminal defense attorneys are even less knowledgeable about most of these anti-pollution laws.
5. Public doesn't know the law either. Expect to have to do a great deal of public education on what constitutes a violation of the Texas criminal laws when it comes to protecting our land, air, and water resources and our public health.

Once citizens and the media learn these laws exist, however, just about everybody in government finds it to their political advantage to be responsive.

### Oil and Gas Waste

If you do have a problem with *oil and gas waste* being slopped out in transit or illegally dumped in your community, there are two approaches that local government can use to address this problem.

All legal *oil and gas waste* haulers — carriers of such things as drilling mud (shown in the two pictures below), waste hydraulic fracturing fluids, and production salt water — operate under permits issued by the Railroad Commission. Their “Statewide Rule 8” (which we know as 16 T.A.C Sec. 3.8) protects water (1) by specifying *how oil and gas waste* is handled and (2) by issuing annual Waste Hauler’s Permits to carriers. Violations of the terms or conditions of these “WHPs” is both an administrative violation (Railroad Commission’s area) and a criminal violation (local peace officers’ ballgame).

Unfortunately, the provisions of Statewide Rule 8 are not always followed, and messes such as the ones shown below can result. While the Railroad Commission has administrative enforcement power over these haulers, that agency has no criminal enforcement staff. Moreover, the amount of drilling activity that is taking place in Texas in such locations as the Eagle Ford Shale formation south of San Antonio is growing much faster than the state’s administrative enforcement staff. Consequently, violations such as these two shown will often be missed unless enforced by knowledgeable local

criminal enforcement officers. Both of these pictures show recent violations in Jim Wells County. Vehicles hitting patches of this waste often spin out of controls, and needless fatalities that have resulted.



There are two approaches to dealing with oil and gas waste criminal violations at the local level. In each case the venue is the county where the violation takes place.

1. Texas Water Code Chapter 29, which sets a criminal penalty of a fine from \$100 to \$1,000 and/or ten days in jail for such violations as hauling *oil and gas waste* without a permit, disposing this waste on public roads or other unauthorized locations (and this would include spilling the waste and not cleaning it up) and using vehicles that are not properly marked. This law is becoming more commonly used as local officers and county attorneys recognize its value; and,
2. Texas Natural Resources Code Sec 91.002, which sets a criminal fine of up to \$10,000 for any violation of Statewide Rule 8. This is a very detailed rule and includes such violations as transporting *oil and gas waste* in a vehicle that leaks, using a un-permitted carrier (and there is a positive duty imposed on waste generators and receivers in Statewide Rule 8 to verify that the carrier has a current valid permit), and various record keeping violations.

Local governments can use both of these approaches to control oil and gas waste winding up in the wrong place, which often boils down to undercapitalized, smaller, marginal carriers trying to skirt the laws and make a quick buck. There's no reason at all why this sort of dangerous behavior has to be tolerated.

Waste production water — saltwater from producing oil and gas wells — generally must be transported to injection wells for proper disposal. The economics of the situation encourages dumping while on the way to the disposal site, as this picture shows. Here the hauler has charged to pick-up a full tanker of saltwater at several wells, and will, in turn, be charged for the volume of water he injects into the ground at the

authorized disposal site. He can make extra profits by dumping some (all?) of this production water on the way. This is a common crime throughout the country.



Making Extra Money by Breaking Several Criminal Laws?

Local officers in Texas may want to use TWC Chapter 29 or NRC Sec. 91.002 to respond to the oil and gas waste dumping, but it is also possible that they will consider this simply as water pollution under TWC Sec. 7.145(a)(2).

Their argument would be that what is happening here is the unauthorized discharge of a “waste” or “pollutant” (produced saltwater) from a “point source” (the container) into or adjacent to “water” (the creek down at the bottom of the hill) without a permit. This behavior certainly meets the elements of TWC Sec. 7.145(a)(2).

If convicted the driver faces up to five years in prison and/or a fine to \$100,000. If this is a company practice, the company faces criminal fines of up to \$250,000.

Although the Texas Litter Abatement Act cannot be used to deal with *oil and gas waste* dumping, Texas Water Code Chapter 7 (Subchapter E) certainly can. As you can imagine, lots of very interesting local policy decisions are included in these situations.

### **Suits by Local Governments**

In dealing with environmental pollution, such as these tires, local government has the same power to file civil suits as does the State Attorney General. These powers are found in Texas Water Code Sec. 7.351, and cover violations of most state environmental statutes, the rules that have been adopted to provide administrative enforcement of these statutes, any permits that have been issued under the statutes

and rules, and any orders that the TCEQ Directors have issued. You'll find that most local city and county attorneys are simply unaware of these civil suit powers.



Criminal enforcement in situations such as this is the most common approach. However, sometimes filing a large civil suit is the right enforcement choice, especially in those cases where the Litter Abatement Act cannot be used because the dumping happened over three years previously (the statute of limitations applies to this particular law).

The civil penalty that a city or county can be awarded in a civil suit runs to \$25,000 per day, which is split with the state. Harris County has been suing environmental violators for over 25 years, and, until recently, that was about the only jurisdiction taking this approach. Over recent years, however, Hunt County and several of the cities there (Greenville and Commerce, in particular) have filed these major suits to deal with larger acts of pollution done for money.

The 84<sup>th</sup> State Legislature made a few changes to how local civil suits for pollution work. HB1794 divides the first \$4.3 million received in any suit equally between the local government bringing the suit and the state; amounts over \$4.2 million go exclusively to the state. This bill also sets some time limits for how long a city or county has to bring a civil suit for pollution. The 85<sup>th</sup> State Legislature added additional restraints to local governments exercising their suit powers (see above). All together, we no longer see civil suits by local communities as being a viable option in most environmental cases.

### 3. TEN QUESTIONS ABOUT LOCAL CONTROL OF OIL AND GAS WASTE

#### 1. Isn't it the Railroad Commission of Texas' job to respond to *oil and gas waste* dumping and mishandling?

No, not by themselves alone. Local governments have a big role to play also.

The State Legislature has given the Railroad Commission the job of regulating most things happening in the oil and gas industry, including regulating oil and gas waste. They do their job in regulating this waste by issuing various kinds of waste handling permits — the “WHP” — and regulating the permit holders to be sure they are staying within the bounds of the law and regulations. This is the world of administrative and civil enforcement by the RRC.

Several states (not including Texas) have statutes requiring each producing oil or gas well to be visited by an inspector at least annually. Although the RRC staff reported conducting 130,812 inspections in FY2014 — and that's a lot of inspections — it would have to almost triple its field investigators simply to visit each well every year. Don't expect this to happen anytime soon.

In FY2014, these inspections resulted in a total of 62,385 alleged administrative violations being identified by RRC oil and gas inspectors. Of these 62,385 alleged violations, 2,178 were sent forward from the RRC District Offices to the RRC's Office of General Council in Austin for administrative enforcement. This is just under 3.5% of the violations identified by the inspectors. There is no indication of what happened to the other 96.5% of violations that were initially identified by field inspectors as violations. Given the structure of the RRC, about the only other point where these could have been resolved was at the district office level. During FY2014, the agency reports that in addition to the 62,385 apparent oil and gas violations identified by its field professionals, 754 complaints were also received from sources outside the agency, of which 96% were reportedly resolved.

Of the 2,178 complaints referred to RRC Austin for enforcement, 1,167 (54%) were for violations of some aspect of Statewide Rule 8, which governs waste hauling and disposal that protects our water resources. The next most common violations concerned well plugging, which is governed by “Statewide Rule 14” with 263 enforcement actions (12% of the total). Half of the time, in 2014 the Railroad Commission dealt with water protection issues when violations were serious enough

to warrant an enforcement order.

There are three ways that any activity can be regulated in Texas: through administrative enforcement, through civil enforcement, and through criminal enforcement. The RRC uses the first two of these approaches, but, having no criminal enforcement unit, does not undertake the third.

That's where local police come into the picture. Police, constables, deputies, fire marshals, and other certified peace officers working for local governments provide almost all criminal environmental enforcement, including criminal enforcement in oil and gas waste cases. If a local community is to benefit from criminal enforcement of Texas criminal laws regulating oil and gas waste, it will most likely be through the efforts of its own officers.

The state has extremely limited resources to use in policing general environmental crimes — around 20 individuals working statewide — and even fewer resources to police environmental crimes involving oil and gas waste (the dozen criminal investigators at the TCEQ normally sit these violations out because of possible conflicts under the Memorandum of Understanding with the Railroad Commission). Moreover, most of the criminal statutes available for direct oil and gas waste violations are misdemeanors. Consequently, just about all government response to criminal violations involving oil and gas waste will come from cities and counties enforcing misdemeanors, just as the State Legislature anticipated. If local police agencies don't learn and enforce these criminal laws, in most cases nobody will.

It is important, however, for local police to keep the RRC informed of cases involving oil and gas waste. The best approach is for local peace officers doing these cases to get to know the district RRC administrative investigators.

## **2. Can local governments enforce criminal laws against persons with a Waste Hauler's Permit?**

Sure. These are just more criminal laws.

Local governments have primary response authority within their jurisdictions for most criminal violations, regardless of whether a person holds a state permit from the RRC or TCEQ or any other state agency. Operating in violation of these permits usually constitutes both an administrative violation (for the state) and a criminal

violation (for locals). In most cases there is no “double jeopardy” involved; different laws are being enforced.

The overall enforcement and regulation system works best when everybody just “does their thing”: the Railroad Commission does administrative and civil enforcement of violations involving oil and gas waste; local peace officers respond to criminal cases, and local prosecutors resolve the criminal charges. Additionally, local governments are increasingly using their powers to sue local polluters to resolve oil and gas waste dumping cases.

The criminal laws used to deal with oil and gas waste violations are just more criminal laws. Instead of being found in the Penal Code, they are found in the Water Code, the Health and Safety Code, and in the Natural Resources Code.

### **3. What are the easiest criminal laws for local governments to use to deal with oil and gas waste?**

#### **ALL OF THE CRIMINAL LAWS SHOWN BELOW CAN BE ENFORCED BY LOCAL POLICE**

##### A. Texas Water Code Chapter 29 Oil and Gas Waste Haulers

Texas Water Code Chapter 29 can be used to deal with most visible violations by both permitted and unpermitted oil and gas waste haulers (such as dumping on streets and using unmarked or leaking vehicles to transport waste). Investigation of one of these common offenses might also result in the discovery that a person is transporting without a valid Waste Hauler’s Permit, which is another criminal violation. The specific sections of the law used are:

*TWC Sec. 29.041 HAULING WITHOUT PERMIT.*

*No hauler may haul or dispose of oil and gas waste off the lease, unit, or other oil or gas property where it is generated unless the hauler has a permit issued under this chapter.*

*TWC Sec. 29.042. EXCEPTIONS.*

- (a) A person may haul oil and gas waste for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.*
- (b) The commission by rule may except from the permitting requirements of this chapter specific categories of oil and gas waste other than saltwater.*

*TWC Sec. 29.043. USING HAULERS WITHOUT PERMIT.*

*No person may knowingly utilize the services of a hauler to haul or dispose of oil and gas waste off the lease, unit, or other oil or gas property where it is generated if the hauler does not have a permit as required under this chapter.*

This provision is particularly interesting since it establishes a violation simply to use an unpermitted hauler. Moreover, Statewide Rule 8 requires that the generator and receiver of the waste — the oil or gas production well and the waste injection well — actively determine that the waste hauler has a valid WHP permit. Nevertheless, there have been few cases where an unpermitted hauler was stopped and processed by a police officer, and that stop become the basis for issuing a violation under TWC Sec. 29.043 against a generator or receiver of the waste (but this will be a next logical step in local enforcement). As soon as haulers learn that they need to follow their permits — and as soon as waste generators and receivers understand that they are subject to enforcement for failure to use a permitted hauler — waste will be handled better. So why not create a “Welcome from the Sheriff” letter to production and disposal well operators reminding them of their responsibility only to use permitted haulers, and explaining the provisions of TWC Sec. 29.043?

*TWC Sec. 29.044. DISPOSING OF OIL AND GAS WASTE*

*(a) No hauler may dispose of oil and gas waste on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal facility without written authority from the railroad commission.*

When oil and gas waste is spilled and then abandoned by the driver — or dumped on a street or on private property that is not a RRC-approved disposal facility, or without having written authority from the RRC — this is the provision commonly cited by local officers. Note that it is a violation of Statewide Rule 8 to transport oil and gas waste in a vehicle that leaks [see Statewide Rule 8 Sec. F(1)(c)(ix)], and if local peace officers enforce NRC Sec. 91.002, the fact that the vehicle was operated in such a manner that it leaked can be the basis for additional criminal fines (maximum: \$10,000 per violation). However, at this time officers seem to be using TWC Sec. 29.044 to deal with road spills.

*(b) No hauler may dispose of oil and gas waste on property of another in other than a railroad commission-approved disposal facility without the written authority of the landowner.*

This violation would cover such situations where used drilling mud was being landfarmed, but, on investigation of a complaint, the landowner had not given his permission for this to take place. Such permission has to be in writing. Perhaps an employee of an absentee landowner was allowing landfarming

without the owner's permission in order to make illicit money.

*TWC Sec. 29.045 USE OF UNMARKED VEHICLES*

*No person who is required to have a permit under this chapter may haul oil and gas waste in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.*

If a vehicle is being used to haul *oil and gas waste*, it must be properly marked with both the permit holder's name and the valid WHP number on the back and sides, in characters at least three inches high. A WHP with no name — or a name with no WHP — would violate this provision, as would proper marking on fewer than the three locations specified. When the peace officer making the traffic stop checks the WHP permit carried on-board the vehicle (required by Statewide Rule 8 to be carried on each vehicle hauling *oil and gas waste* off-site for hire, for disposal), he or she will want to verify that the name and WHP number on the back and sides of the vehicle matches the name and WHP number on the copy of the permit carried on the vehicle. Sometimes the WHP number has been written by somebody's finger drawing in the dust on the back is an otherwise unpermitted truck. This is invalid too.

*TWC Sec. 29.046 PENALTY*

*A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than 10 days or by both.*

**B. Texas Natural Resources Code Chapter 91 Provisions Generally Applicable**

Texas Natural Resources Code Sec. 91.002 can be used if the person is violating a rule contained in Statewide Rule 8. Reaching this conclusion will generally happen in discussion with a RRC investigator, but occasionally by the officer alone (many of the Statewide Rule 8 requirements are so basic as to easily enforceable by local officers).

There are four criminal violations under this chapter, the first two of which — TNRC Sec. 91.002 and Sec. 91.143 — can be enforced by local officers fairly easily. The last two — TNRC Sec. 91.458 and Sec. 91.604 — will require some technical support from the RRC.

*TNRC Sec. 91.002. CRIMINAL PENALTY.*

*(a) A person who wilfully or with criminal negligence violates Section 91.101 of this code or a rule, order, or permit of the commission issued under that section commits*

*an offense.*

- (b) An offense under Subsection (a) of this section is punishable by a fine of not more than \$10,000 a day for each day a violation is committed.*
- (c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.*

An offense under this section is punishable by a fine of not more than \$10,000 a day for each day a violation is committed. Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred. Statewide Rule 8 — the administrative rule that the RRC uses to protect water through the control of oil and gas waste. This rule controls the movement and disposal of such waste, including the issuance of Waste Hauler's Permits. Statewide Rule 8 is a rule issued under NRC Section 91.101; consequently, the penalties for violating any element of Statewide Rule 8 are those shown in this statute. Local peace officers should take the time to read and understand the provisions of this rule.

*TNRC Sec. 91.143. FALSE APPLICATIONS, REPORTS, AND DOCUMENTS AND TAMPERING WITH GAUGES.*

*(a) A person may not:*

- (1) make or subscribe any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;*
  - (2) aid or assist in, or procure, counsel, or advise the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter;*
  - (3) knowingly simulate or falsely or fraudulently execute or sign such an application, report, or other document;*
  - (4) knowingly procure these applications, reports, or other documents to be falsely or fraudulently executed, or advise, aid in, or connive at this execution; or*
  - (5) knowingly render inaccurate any monitoring device required to be maintained by a commission rule, order, or permit.***
- (b) A person commits an offense if the person violates this section. An offense under this section is a felony punishable by:*
- (1) imprisonment in the Texas Department of Criminal Justice for a term of not less*

- than two years or more than five years;*
- (2) a fine of not more than \$10,000; or*
- (3) both the imprisonment and the fine.*
- (c) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.*
- (d) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.*
- (e) The commission may impose an administrative penalty in the manner provided by Sections 81.0531-81.0534 on a person who violates this section. The amount of the penalty may not exceed \$1,000 for each violation.*

As (e) states, this criminal violation may also be enforced administratively by the RRC. In FY2012 the RRC handled 3 such violations administratively. In FY2013, this had grown to 113 cases handled by the agency, and by FY2014 to 143 cases. By deciding to handle these false paperwork cases as administrative violations, the most the RRC could have penalized the 143 violators was \$143,000. Had the agency turned these over to local prosecutors for criminal enforcement, that \$143,000 could have grown to \$1,430,000 and a potential 715 years in prison for the violators. If an oil and gas operator knowingly provides false, sworn documents to the state, why shouldn't the penalties be sufficiently large to remove the incentive?

The first four violations under (a) are paperwork violations that correspond to Section 37.10 (Tampering With Governmental Record) in the Texas Penal Code. If an officer finds a forged WHP document onboard a vehicle he stops — and state records are immediately available online for verification of on-board paper work — he should consider using PC 37.10 rather than this one, simply because of prosecutor familiarity. The violation at (a)(5) has been used by local officers to control the theft of batteries at remote well sites. The theft of these batteries has the effect of shutting down RRC required monitoring gauges, which certainly renders them “inaccurate.” Note that this is a felony statute when handled criminally.

The remaining two violations are such that local peace officers are not likely to ever enforce their provisions.

*TNRC Sec. 91.458. CRIMINAL PENALTY (Pertains to Saltwater Storage Pits)*

- (a) *A person who violates Section 91.452 of this code or an order of the commission under Subsection (a), Section 91.457, commits an offense.*
- (b) *An offense under this section is a Class A misdemeanor.*

The two referenced sections are:

*TNRC Sec. 91.452. PROHIBITED ACTIVITY.*

*Except as provided by this subchapter, a person conducting oil and gas development or production operations, geothermal operations, or underground hydrocarbon storage operations may not use a saltwater disposal pit for storage or evaporation of oil field brines.*

*TNRC Sec. 91.457. REMOVAL OF UNAUTHORIZED PIT.*

- (a) *The commission may order a person who is operating a saltwater disposal pit in violation of this subchapter to close the pit in compliance with this subchapter and commission rules, standards, and specifications, at the pit operator's own expense.*
- (b) *If a person ordered to close a saltwater disposal pit under Subsection (a) fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.*

*TNRC Sec. 91.604. CRIMINAL PENALTY (Pertains to Oil and Gas Hazardous Waste)*

- (a) *A person who knowingly violates a rule, order, or permit of the commission issued under this subchapter commits an offense.*
- (b) *An offense under this section is punishable by imprisonment for up to six months, by a fine of up to \$10,000 for each day the violation is committed, or by both.*
- (c) *Venue for prosecution under this section is in the county in which the violation is alleged to have occurred.*

C. Health Nuisance Violations under THSC Chapter 341

Health nuisance laws can be used by local peace officers and local health department investigators to deal with a wide range of unsanitary practices anywhere in Texas. There are two of these statutes available to peace and health officers — THSC Chapter 341 (applies anywhere) and THSC Chapter 343 (applies on non-agricultural land in unincorporated areas of Texas). Using one of these laws is the way to respond to the fact that county “Designated Representatives” are generally prevented from enforcing sewage violations (TWC Chapter 366) at well sites. This

exclusion is based on the fact that the DRs actually represent the TCEQ, which is itself precluded from enforcing sewage laws at well sites. Using THSC Chapters 341 and 343 are good local criminal enforcement workarounds. Penalties are small, but having to appear in JP or Municipal Court can be enough to result in compliance. There are several useful provisions for local peace officers in these two laws, but the most versatile is:

THSC Sec. 341.013(c)

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

D. Water Pollution Violations of Texas Water Code Chapter 7

Texas Water Code Sec. 7.145 and Sec. 7.147 — felony and misdemeanor water pollution, respectively — may be used by local peace officers if oil and gas waste is dumped into or adjacent to water. Oil and gas waste is included among those types of waste covered by these two water pollution laws.

E. Felony and Misdemeanor Illegal Outdoor Burning

TWC Sec. 7.182 and Sec. 7.183 can be used to deal with felony illegal burning. If the violator releases an air contaminant (note: this is a defined term that includes *smoke*) without a TCEQ-issued permit that places another person (not including a first-responder) in imminent danger of death or serious bodily injury, one of these provisions may have been violated. The penalty for an individual is a fine of \$1,000 to \$250,000 and/or confinement to 5 years; penalty a non-individual is a fine of \$2,000 to \$500,000 for violations of TWC Sec. 7.182; more for violations of TWC Sec. 7.183. The difference between these two statutes is the level of intent. TWC Sec. 7.182 simply requires a reckless release of the smoke or other fumes; TWC Sec. 7.183 requires an intentional or knowing discharge and a knowing endangerment. This is a high mental state to prove, so officers that use this law rely on the less stringent elements in TWC Sec. 7.182. Both statutes provide for 5 years confinement and huge potential fines.

TWC Sec. 7.177(a)(5) can be used to deal with misdemeanor illegal burning. This section is the criminal violation charged when the underlying act is a violation of the Texas Outdoor Burning Rule (30 Texas Administrative Code Sec. 111 [Subchapter B]). Beginning September 1, 2017, the penalty for most misdemeanor illegal outdoor burning takes to familiar “C, B, and A Misdemeanor” structure used elsewhere in

state criminal law.

**4. Does the Railroad Commission have to give it's permission for local governments to act to enforced criminal laws?**

No. The RRC enforces administrative and civil violations, and local government enforces criminal violations. Each have been authorized to do so by the State Legislature.

However, it's always good policy for local officers doing criminal enforcement to know and work with their RRC district counterparts doing administrative investigations. Local officers should always let the district RRC office know about cases that local government is working and resolving. Partnerships just make good sense.

**5. Why can't local government use the same law for oil and gas waste it does to stop general illegal dumping?**

Because the State Legislature and Governor say it can't.

The most commonly used law to stop illegal dumping is the Texas Litter Abatement Act — Texas Health and Safety Code Chapter 365. This law sets fines and confinement for various illegal dumping acts (i.e., dumping, allowing dumping, receiving, hauling for dumping) based on the weight or volume of solid was or litter involved.

Since this law deals specifically with *solid waste* and *litter*, officers pay strict attention to what's included — and not included — in those definitions.

As it turns out, the State Legislature uses language in the definition of "solid waste" that specifically removes oil and gas waste from that category:

*THSC Sec. 361.003(36)(A) The term (i.e. solid waste) does not include (iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.*

Since oil and gas wastes are excluded from the definition of waste covered by the Litter Abatement Act, you have to use other laws to deal with this type of waste.

If it is not clear that the waste being dumped is oil and gas waste, officers often file illegal dumping charges under this law, describing the waste dumped as an

“unknown, slick substance.” If later it become clear that the material dumped was oil and gas waste, the charges can be re-filed as one or more violations of TNRC Sec. 91.002 (which may easily be more costly to the violator).

**6. Can local governments use other general anti-pollution laws to control oil and gas waste?**

Often times, they can.

As long as you’re not using THSC Chapter 365 — the Texas Litter Abatement Act — you can use many of the general environmental criminal laws to respond to oil and gas waste issues.

Just be sure you know and use the laws listed at Question 3 above, and you should be all set.

Also, note that sewage and general trash generated as a byproduct of the oil and gas exploration and production process at a well or other related location is considered to be oil and gas waste. Please help educate the general public — and elected officials — that items generally under the jurisdiction of the TCEQ are NOT, if it’s oil and gas waste. Administrative and civil enforcement of these violations become the responsibility of the Railroad Commission when they generated as byproducts of the oil and gas exploration and production process.

However, trash and sewage improperly disposed at trailer camps, “man-camps,” and other places oil industry folks live off-site when they are not working are not considered to be exempt from any of the state criminal environmental laws and rules. Local government can use the standard environmental criminal laws to respond to violations in these places — including using THSC Chapter 365 to deal with illegal dumping.

**7. Why isn’t the TCEQ acting to control oil and gas waste in our community?**

The State Legislature and Governor have specifically assigned that task to the Railroad Commission ... and to local government.

For a clarification of the overall decisions of the State Legislature concerning which agency is to handle various types of waste, read the Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) at Title 16 T.A.C. Sec. 3.30. The attorneys and

managers from the two agencies have followed the direction of the State Legislature for decades, and are regularly updating this document that expresses their common understanding. One interesting section reads:

*16 T.A.C. Sec. 3.30(d)(1). Several types of waste materials can be generated during the drilling, operation, and plugging of these [oil, gas, or geothermal resource] wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC. Wastes from oil, gas, and geothermal exploration activities subject to regulation by the RRC when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ under 30 TAC Chapter 330 are, as defined in 30 TAC §330.3(148) (relating to Definitions), "special wastes."*

The TCEQ may be able to answer questions for local government as part of their Small Business and Local Government Assistance program, but the State Legislature has placed enforcement responsibility for oil and gas waste violations with the RRC and local government.

But in all honesty, the problem in controlling oil and gas waste is not at the state level. Most problems arise from local governments not using the criminal enforcement powers provided in state criminal law, as is true when the issue is controlling general illegal dumping of other kinds of waste, water pollution, and other pollution violations.

### **8. We're smart people here in our local government; why have we never heard of our enforcement powers?**

We don't study it as part of normal training.

Environmental criminal laws are almost never covered in law enforcement academies, so the peace officers trained in these academies are generally unaware of the state criminal laws protecting our air, land, and water resources. The criminal

laws provided to local governments to control oil and gas waste are even less well known.

The same situation exists in Texas law schools, where most of our criminal prosecutors are trained. If a law student wants to study environmental law, he or she may be limited to one class that covers federal law and the administrative enforcement thereof. Specific classes on Texas criminal law — and on the criminal laws that can be used for oil and gas waste — are simply not available. Moreover, when the city administrator decides to further his or her education and earns a Masters of Public Administration degree, it's extremely likely that the entire program had no mention at all of the criminal environmental laws that can be used to control waste of all types, including oil and gas waste.

This general lack of training can result in a situation where several local officials find themselves agreeing with each other (incorrectly) that “This is a state problem; there's nothing we can do!” Agreed ignorance can really get in the way of local agencies beginning to enforce these state criminal laws.

In some situations, local officials may even be under the impression that citizens don't want them to respond to oil and gas waste violations. However, as citizens become wiser as to what to expect, these views can change quickly. Local leaders who think voters don't want these anti-pollution laws enforced should ask a few.

It's really that simple. Local government is a very busy place these days, and nobody is loafing. But if police, prosecutors, city attorneys, and elected officials all agree, “There is nothing that we can do,” it can be difficult to break through that mental roadblock.

But all local officials have to do is to look around. Many cities and counties have developed outstanding programs of local environmental protection through enforcing state criminal laws. Now more and more counties and cities in the oil patch are learning that criminal laws exist to stop bad hauling and dumping of oil and gas waste, and that using these laws just takes a little learning and a decision to make the city or county cleaner by controlling the haulers.

## **9. Doesn't local criminal enforcement of laws against oil and gas waste make the industry mad?**

No. Just the opposite.

If these criminal laws are on the books in Texas, the oil and gas industry definitely supports them. Otherwise, they wouldn't be on the books at all.

Virtually all handling, hauling, and disposal of oil and gas waste is done by the industry in a very responsible and lawful manner; companies doing things right certainly don't want to be underpriced by outlaws.

Moreover, when outlaws make a mess, it reflects on the entire oil and gas industry, not just on the few bad actors. Since virtually all oil and gas operators and service companies want to be in a long, stable, friendly relationship with their neighbors, there is wide support for using state and local authorities to keep things clean.

As local officers get to know the oil and gas operators in their community, they will find that virtually all of the industry supports enforcement against violators.

However, just as local police generally don't know these laws, employees of operators don't either. General employee education as to the criminal laws governing their activities is important and should occur as routine employee training. No responsible operator wants to see an employee or contractor violate the criminal laws out of ignorance.

#### **10. What if local government doesn't want to act to control oil and gas waste dumping?**

Well, that would be pretty weird. They'll probably have a needlessly messy, and dangerous, city and county.

It's a matter of math. The RRC has a limited number of inspectors — around 150 oil and gas field inspectors statewide — and they are looking at the entire oil and gas exploration and production business. Their work is not limited to oil and gas waste violations. Moreover, Texans and others are drilling more and more wells every day. The well count for July 2015 shows over 432,000 wells of all types (oil and gas, active, capped, and injection/disposal) in Texas, of which over 315,000 are active oil and gas production wells.

In FY 2014, the RRC reports that its inspectors performed 130,812 inspections of these wells and other permitted facilities. That's a lot of work for a small crew trying to cover 8.6% of the landmass of the "Lower 48" states, about half of which has active exploration and productions activities underway.

What's the chance that a RRC inspector will be immediately available when an

event of outlaw hauling or oil and gas waste dumping happens? It is much more likely that local police, deputies, constables, fire marshals, and other sworn officers already working to protect the city, county, businesses, and citizens will be the ones immediately available.

The RRC investigators are doing all they can to respond to oil and gas waste problems throughout the state, but if local government is going to sit there and watch problems happen, with no local response, there's not much chance things will get better as fast as citizens and industry want.

#### 4. SUGGESTED HOMEWORK

I'd also like to draw your attention to a document we've posted on the homepage of the TIDRC.com website, in the middle at the top, just under the picture (see below). It's a link to Pope Francis' latest encyclical on ecology and creation called Laudato Si: On Care for Our Common Home.

**Texas Illegal Dumping Resource Center**  
 Enforcement resources for Texas cities and counties

Online Classes      Complete Training Calendar      Past Classes  
 Map of Scheduled Classes

**Pope Francis' Encyclical on Ecology and Creation  
 Laudato Si: On Care for Our Common Home**

**Schedule of In-person Classes - Click Here to Register for Any of These**  
 Aug 11 in Texarkana; Local Control of Scrap Tires; 6 CEUs; FREE

**Local Enforcement**  
 Most illegal dumping, water pollution, illegal outdoor burning, and public health nuisances can be effectively controlled by cities and counties using these approaches:  
 1. Municipal Code Enforcement (Applies only inside most cities)  
 Fine to \$500 / \$4,000; Enforced By: Municipal code enforcement officers

Catholic, Protestant, Buddhist, Muslim, follower of another religion or “none of the above,” you should take a look at this important document. One observer said that “This may have been written as a Catholic document, but we Protestants are reading it over their shoulder.” If you are going to read one environmental policy book this year, I’d strongly endorse this one. Moreover, many Catholic churches in Texas and beyond will be doing an extended study of this document, beginning in fall 2015. I am absolutely sure that you would be totally welcome to participate in these discussions. One of the “missing elements” in keeping our cities and counties clean has been the involvement of the religious community, and the focus on Laudato Se could be a turning point. Check it out.

## 5. CONCLUSION

1. Texas has a strong set of civil and criminal laws that local governments can use to fight pollution.
2. These other criminal and civil laws supplement your code enforcement. If your city has a solid code enforcement program, things can be very good. If you don't, then that's where you need to put your energy. Good code enforcement programs come first. Of course, if you’re working in the county, you don’t have code enforcement as a foundation to use. In this case you begin with health nuisance enforcement (THSC Chapters 341 and 343);
3. However, when you are faced with an illegal dumper, water polluter, hazardous waste polluter, or other environmental criminal, you're going to need the cooperation of local police to respond. Criminal violators need peace officer responders, using THSC Chapter 365 and TWC Chapter 7, Subchapter E);
4. If your community will use all of its options, it will be cleaner and your citizens happier and more supportive.

The approaches on the Enforcement Options chart work; however, few communities use them all. The more of these you use, the better result you'll have, and the closer you'll come to having the polluter pay.

### Further Reading and Studies

If you want to know more about these topics, we suggest that you begin by reading

the statutes on the TIDRC website at <http://www.tidrc.com/laws.html>.

You may also read the class material for the *Illegal Dumping Enforcement, Illegal Outdoor Burning, Ethics of Local Enforcement, Local Control of Oil and Gas Waste, Local Control of Scrap Tires, and Enforcing Public Health Nuisance Laws*. Reading this material is free at that site, and fees for earning a Certification are low.

We also provide in-class courses on many of these topics for officers, managers, and elected officials needing additional information. All of our classes are listed on the home page at [tidrc.com](http://www.tidrc.com).

There are also resources, including various summary and enforcement charts, at <http://www.tidrc.com/resources.html>.

Now you can take the examination for this one-hour class. Upon successful completion of your test, we'll email you a Certificate of Completion, as we have been authorized to do by the Department of State Health Services (soon to be the Texas Department of Licensing and Regulation). No immediate changes with any of the education rules for code enforcement officers and registered sanitarians are contemplated, according to TDLR.

All the best, and please do not hesitate to contact me — John Ockels at [ockels@tidrc.com](mailto:ockels@tidrc.com) — if we can be of additional services.