



Illegal Dumping: A Guide for Local Governments

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Who Should Use This Guide?

This guide, produced by the TCEQ, can help local officials and local governments in Texas address common issues related to waste and illegal dumping. Primarily, the guide aims to inform municipalities and counties about their responsibilities regarding compliance and enforcement.

This publication is not a substitute for the actual rules. To obtain the most current, official copy of state rules, contact the Secretary of State’s office at 512-305-9623 or visit the Web page at <[info.sos.state.tx.us/pls/pub/readtac\\$ext.viewwtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewwtac)> and scroll down to Title 30 Environmental Quality. Copies of the rules can also be downloaded from our Web page, at <www.tceq.state.tx.us/rules>.

The Rules on Illegal Dumping

Illegal dumping is a problem across the nation and throughout the state—in both rural and urban areas. In the most common form of illegal dumping, people dump waste at a remote location or on an abandoned

property instead of in a landfill. There is no typical illegal dumper—it can be anyone.

Illegal dumping is not only aesthetically unappealing—it can pose a threat to human health. Rats, mice, mosquitoes, and flies can all carry disease and are attracted to unkempt areas that contain food scraps. Water resources—such as ponds, streams, lakes, and even aquifers—can also become polluted from illegal dumping.

Regulations regarding illegal dumping can be found in the Texas Health and Safety Code (THSC), as well as in the Texas Water Code (TWC). Summaries of these rules appear below.

General Rules (THSC, Chapter 341)

Texas Health and Safety Code 341 is titled “Minimum Standards of Sanitation and Health Protection Measures.” The chapter:

- Defines *sanitary* as the “condition of good order and cleanliness that precludes the probability of disease transmission.”
- Provides information on general nuisances.
- Allows home-rule municipalities¹ authority to enact more stringent requirements.
- Allows home-rule municipalities to appoint an environmental health officer.

Definition of Public Nuisance (THSC 343)

Chapter 343 of the Texas Health and Safety Code is titled “Abatement of Public Nuisances.” Subchapter B of this chapter applies only to unincorporated areas of a county and defines a *public nuisance* as any of the following:

- (1) keeping, storing, or accumulating refuse on premises in a neighborhood, unless the refuse is entirely contained in a closed receptacle;
- (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of

¹ To qualify as a home-rule municipality, a municipality must operate under a municipal charter that has been adopted or amended as authorized by Article XI, Section 5, of the Texas Constitution. For more information, see Chapter 5 of the Local Government Code.

- a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
- (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
 - (4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
 - (5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;
 - (6) maintaining on abandoned and unoccupied property, in a neighborhood, a swimming pool that is not protected with:
 - (A) a fence that is at least four-feet high and that has a latched and locked gate that cannot be opened by a child; or
 - (B) a cover over the entire swimming pool that cannot be removed by a child;
 - (7) maintaining on any property in a neighborhood in a county with a population of more than 1.1 million a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or
 - (B) a cover over the entire swimming pool that cannot be removed by a child;
 - (8) maintaining a flea market in a manner that constitutes a fire hazard;
 - (9) discarding refuse or creating a hazardous visual obstruction on:
 - (A) county-owned land; or
 - (B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body; or
 - (10) discarding refuse on the smaller of:
 - (A) the area that spans 20 feet on each side of a utility line; or
 - (B) the actual span of the utility easement; or
 - (11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement.

This subchapter does not apply to a site or facility that is subject to permitting or is otherwise regulated by a state agency; is subject to licensing or permitting under Chapter 361 (e.g. landfills, compost piles and other municipal solid waste facilities); or qualifies as agricultural land for tax appraisal under Subchapters C or D, Chapter 23, Tax Code.

Definition of Litter (THSC 365)

Chapter 365 of the Texas Health and Safety Code is titled “Texas Litter Abatement Act.” Therein, *litter* is defined as:

- (A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or
- (B) nondecayable solid waste, except ashes, that consists of:
 - (i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;
 - (ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and
 - (iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

Enforcement (TWC 7)

Chapter 7 of the Texas Water Code, entitled “Enforcement,” authorizes the TCEQ to enforce the provisions of the TWC and the THSC that are within the agency’s jurisdiction, and outlines administrative and civil enforcement and specialized criminal penalties.

Solid-Waste Management (THSC 363.113)

According to Section 363.113 of the Texas Health and Safety Code, “Establishment of Solid Waste Management Services”:

Each county with a population of more than 30,000 and each municipality shall review the provision of solid waste management services in its jurisdiction and shall

assure that those services are provided to all persons in its jurisdiction by a public agency or private person.

Responsibilities for Applying the Rules

Federal, state, and local governmental entities are responsible for applying, administering, and enforcing the rules.

Federal Responsibilities

In Texas, the regulation of solid waste has been delegated to the TCEQ by the U.S. Environmental Protection Agency. Because of this, the EPA typically gets involved only in the most serious cases of illegal dumping.

State Responsibilities

The TCEQ regulates illegal dumping as part of its responsibility to safeguard human health and environmental quality. Texas has several laws that make dumping a criminal offense, including Chapter 7 of the TWC. In rural areas without a county litter officer, TCEQ regional investigators are often the first to respond to illegal-dumping complaints. Please refer to “Area and Regional Offices” on pages 7–8 for locations and contacts.

Under the municipal solid waste rules (30 TAC 330²), the TCEQ registers and administers permits for municipal solid waste, transfer, processing, and disposal facilities. According to rules found in 30 TAC 328, recycling and composting facilities are regulated by the state through notification and registration, unless the facility is owned or operated by a local government.

The TCEQ regulates the management of industrial and hazardous waste by rules found in 30 TAC 335.

Local-Government Responsibilities

Municipalities and counties have the statutory authority and responsibility to administer and enforce the state’s illegal-dumping regulations, which include THSC 341, 343, and 365, in addition to the TWC.

A city or town may draft its own ordinance to regulate illegal dumping if the state requirements do not meet its needs. Restrictions must be in the form of one or more municipal ordinances.

According to THSC 363.113, if a county has a population of more than 30,000, it is required to ensure the provision of solid-waste services. The regulation does not state that the services must be free of charge, or that the services must be performed by the county. Counties may choose to contract with a

private company or individuals for waste-collection services.

Some of the ways that counties provide service are:

- setting roll-off containers throughout the county and assessing all property owners a use fee
- formally recognizing specific transporters to serve the county
- monitoring all areas of the county to assure that solid-waste service is available

The TCEQ encourages local authorities to educate individuals and businesses about local regulations on illegal dumping.

Some Common Waste Issues

Scrap Tires

Scrap-tire regulations exist to control disease carriers (mosquitoes, rats, and snakes) and prevent fires. The TCEQ requires a registration as a scrap-tire storage facility of any facility that is going to store 500 or more tires outdoors. When an unauthorized tire dump site is found, the tires must be disposed of properly.

There are a variety of ways in which tires can be properly disposed of. Several of these are listed below. For a more complete list, please see the TCEQ Web page <www.tceq.state.tx.us/goto/tires/>.

The following are some of the principal ways in which scrap tires can be disposed of or recycled:

- using them as planters for new trees
- shredding them to 3/8-inch size and using them for mulch in landscaping
- splitting, quartering, or shredding them and disposing of them in a landfill
- shredding them to a size between 2 and 6 inches and using them as a base for paved or unpaved roads
- shredding them to a size between 3 and 10 inches and using them as media in the leachate collection system at the landfill
- using them to stabilize of ditches during construction activities

For general information on scrap-tire management, go to our “Scrap Tires” Web page at

<www.tceq.state.tx.us/compliance/tires/>. To search our database, which can be used to generate lists of scrap-tire processors, recycling facilities, and energy-recovery facilities in your area, go to our Web page at <www5.tceq.state.tx.us/TireQuery/>.

If you decide to process or shred tires for reuse or disposal, you must register as a scrap-tire processor. Depending on the quantity of tires and where they are stored, you may even have to register as a storage facility. To find forms and information for registering

² Short for “Title 30, Texas Administrative Code, Chapter 330.”

as a storage facility or processor, please visit <www.tceq.state.tx.us/forms> and search by number for form TCEQ-10297 and the corresponding instructions, TCEQ-10298.

Barrels, Paint, Used Oil, and Motor Fluids

Abandoned barrels left at illegal dump sites or in vacant buildings present another common waste issue. To dispose of waste contained in barrels or the empty barrels themselves, you must follow specific rules. If you find an abandoned barrel that is empty, dry, and made of metal, it can be sold to a scrap-metal dealer. Empty, dry, plastic barrels may be sold or taken to a plastic recycler.

Perform a waste determination on the contents of the barrels or drums containing waste to see if they are hazardous (30 TAC 335.62). If you suspect the contents are motor oil or a mixture of oil and water, some oil handlers will travel to your location to test the oil for purity and collect the contents free of charge or for a fee. For a list of used-oil handlers or collection centers in your area, visit <www.earth911.org>. Many collection centers also accept other motor fluids for recycling, such as antifreeze or transmission fluid.

If the contents of a barrel or drum are determined to be nonhazardous, handlers may dispose of the contents and container at an authorized solid waste management facility.

If a barrel or drum contains hazardous waste, it should be labeled, listed on a waste manifest, and taken to an authorized treatment or disposal facility. Alternatively, paint and paint-related wastes may be managed as universal wastes in accordance with the requirements in 30 TAC 335.262. The TCEQ, for the convenience of generators, lists commercial management facilities for hazardous and industrial solid wastes in publication GI-225, *Commercial Management Facilities for Hazardous and Industrial Solid Wastes*.

Green Waste

Texans can handle plant litter and landscaping debris in a variety of ways. The TCEQ encourages composting and has many publications on starting a composting program, including *Mulching and Composting, A Take Care of Texas Guide* (GI-036).

Under certain conditions, a county or municipal government may also burn green waste. This disposal option requires site approval and burn approval from the TCEQ regional office to burn accumulations of brush, trees, and other plant growth that cause a condition detrimental to public health and safety. The

burn must occur at a site owned by the local government and may be authorized only when there is no practical alternative. More information about the Outdoor Burning Rule appears in TCEQ publication RG-049, *Outdoor Burning in Texas*.³

Another option is to hire a contractor that uses an air-curtain incinerator to burn the material in place, or you may consider purchasing one. The TCEQ requires that air-curtain incinerators have an Air Curtain Incinerator General Operating Permit. Please contact the Air Permits Division at 512-239-1250 for more information.

Private Landfills

There are some instances where individuals can bury their litter or other solid waste on their own land if off-site disposal is too costly or impractical. They must comply with 30 TAC 330.13(a) and 335.5. This rule states that a permit, registration, or other authorization is not required for the disposal of litter or other solid waste that is generated by an individual on that individual's own land, as long as the following conditions all apply:

- The litter or waste is generated on land the individual owns, and the disposal occurs on land the individual owns.
- The litter or waste is not generated as a result of an activity related to a commercial purpose, and the disposal is not for a commercial purpose.
- The waste disposed of is not hazardous or industrial.
- The volume of waste disposed of by the individual does not exceed 2,000 pounds per year.
- The waste disposal method complies with 30 TAC Subchapter B Sections 111.201–111.221 (relating to Outdoor Burning).
- The waste disposal method does not contribute to a nuisance and does not endanger public health or the environment.
- The waste was not generated by anyone other than the property owner.

Disposal without prior authorization is only allowable under the guarantee that no discharge, or imminent threat of discharge, of municipal solid waste into or adjacent to the waters of the state shall occur. In addition, the waste cannot create or maintain a nuisance situation that could endanger human health, welfare, or the environment.

Nonhazardous industrial solid wastes may be stored, processed, or disposed of by a generator on

³ You can download a copy of any TCEQ publication in print at <www.tceq.state.tx.us/publications>. Type in the three-digit number where indicated.

property owned or effectively controlled by the generator if the property is within 50 miles of the point of generation and the wastes are not commingled with wastes from another source, in accordance with 30 TAC 335. If you are disposing of nonhazardous industrial solid waste on your own property, you must submit certain information to be recorded in the deed of record in any county where the disposal takes place and properly notify the TCEQ. Management of industrial solid waste must comply with the general prohibitions in 30 TAC 335.4.

Recycling

Some owners of illegal dump sites claim they are recyclers or recycling facilities, making it difficult to identify legitimate recyclers. According to 30 TAC 330.3 (122), *recyclable material* is material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste as soon as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material. For detailed information on recycling rules, please see 30 TAC 330.11(e)(2), 30 TAC 328, 30 TAC 332.30, and 30 TAC 335. Guidance on recycling is available in *Can I Recycle Some of My Industrial or Hazardous Wastes?* (TCEQ publication RG-240).

Although there are many different kinds of recycling facilities, nonhazardous waste recyclers, such as those regulated by 30 TAC 328, share some basic characteristics, such as:

- They accept only source-separated recycled materials (which generally can be commingled with other inert waste, depending on how it was collected), with less than 10 percent of each load being nonrecyclable.
- They add value to the materials they receive by sorting or processing the waste to meet the specifications of a buyer or market.
- After processing, they sell the materials or put them to a beneficial reuse.
- On the other hand, unauthorized processing facilities and dump sites may:
- Require minimal or no source separation of recyclable materials.
- Charge tipping fees for the materials they receive.
- Stockpile most of the material they receive, with little or no processing.

Recycling facilities that comply with the rules will generally have a high turnover of materials because of the requirements in 30 TAC 328.4, and be capable of providing proof of sale of recyclable materials.

Some facilities are exempt from the reporting, recordkeeping, and storage-limitation requirements of the rules in 30 TAC 328.4–5, including requirements for reporting, record keeping, and storage limitation. These exempt facilities include:

- facilities owned or operated by local governments (cities and counties), or by state or federal agencies
- metal smelters and secondary metal recyclers that profit from the resale of the metals they process
- facilities that accept only source-separated recyclables, more than 50 percent of which are received from the public or unaffiliated haulers, and accept no financial compensation (tipping fees, discounts, or hidden charges) for any of the materials they receive. This exemption applies to buyback operations, community drop-off centers, and in-house recycling and composting activities, as long as all other requirements are met.

All recycling and composting facilities must comply with the general rules to prevent a nuisance and avoid any possible danger to human health, welfare, or the environment. The rules require recycling facilities for combustible materials to have a fire-prevention and -suppression plan, which should be available to the local fire-prevention authority.

Investigations and Enforcement

In 30 TAC 330 and 335, the TCEQ is charged with investigation and enforcement of unauthorized waste processing, disposal, or storage sites that require a permit.

Most investigations of unauthorized illegal dumping sites are prompted by citizen complaints. The TCEQ generally investigates those sites that collect fees for dumping or recycling. Authorized locations will have a TCEQ registration, permit, or other authorization.

In cases where the TCEQ cannot trace the illegal dumping to a company or individual, local law enforcement is authorized to enforce the regulations in the THSC and stop the activity and/or disposal of the waste to prevent a nuisance condition.

Some local governments develop an enforcement program that includes a litter-abatement officer to help control the problem. The Houston-Galveston Area Council offers helpful resources for establishing a local enforcement program. Visit its Web page at <www.h-gac.com/home/> and click on “Community

& Environmental.” Then click on “Solid Waste” which will take you to a link to “Environmental Enforcement.”

For more detailed information on any aspect of the enforcement process, contact your local regional office (see page 7 for contact information) or the Small Business and Local Government Assistance program, at 800-447-2827.

Assistance, Funding, and Resources

Local governments deal with waste and nuisance issues of various types, from discarded piles of used tires and construction waste to brush, grass clippings, and landscaping debris (“green waste”). The TCEQ offers resources, guidance, and support for a variety of common issues regarding illegal dumping and disposal of waste.

Through the state’s Regional Solid Waste Grants Program, created by THSC 361.014, approximately \$11 million per year in grants is awarded to regional and local governments for projects to manage municipal solid waste.

The program funds cities and local governments that want to create a local enforcement program, a litter cleanup project, or a plan for solid-waste management. These funds are given to the local councils of government to award, in turn, to local governments. To find your local council of government, visit the Texas Association of Regional Councils online at <www.txregionalcouncil.org/>, or call 512-478-4715.

Another resource is the Keep Texas Beautiful program. You can visit KTB online at <www.ktb.org> or contact them at 800-CLEAN-TX (253-2689). Keep Texas Beautiful involves government, business, civic groups, and volunteers in addressing litter prevention, solid-waste management, recycling, composting, beautification, and general community improvement. KTB also offers programs and education for cleanup coordinators.

For More Information

- For confidential assistance on environmental compliance for small businesses and local governments:
Small Business and Local Government Hotline, 800-447-2827

- To report a spill (24 hours a day):
Spill Reporting, 800-832-8224

- To report an environmental complaint or violation:
Environmental Violations Hotline, 888-777-3186
- For information about air permits:
TCEQ Air Permits Division, 512-239-1250
- For information about waste authorizations:
TCEQ Waste Permits Division, 512-239-2334
- For information about recycling:
TCEQ Pollution Prevention and Education Section, 512-239-3100
- For information about water quality issues (wastewater permitting):
TCEQ Water Quality Division, 512-239-4671
- For information about drinking water or water supply issues:
TCEQ Water Supply Division, 512-239-4691
- For information on scrap-tire recycling and management:
TCEQ Field Operations Division, 512-239-2515
- For information on household hazardous waste programs or agricultural waste pesticide collections:
TCEQ Pollution Prevention and Education Section, 512-239-3100

Texas AgriLife Extension Service at Texas A&M University, 979-845-7800
- For a list of Texas AgriLife Extension County Offices:
Texas AgriLife Extension, www.county-tx.tamu.edu/
- To order EPA publications, including the *Illegal Dumping Prevention Guidebook* (EPA 905-B-97-001): *National Service Center for Environmental Publications*, www.epa.gov/ncepihom/ or 800-490-9198
- For information on rural solid waste issues:
Texoma Solid Waste Authority, www.taswa.com or 903-564-4749
- For information on programs and resources to prevent illegal dumping:
Texas Illegal Dumping Resource Center, 903-891-3632