

Issue 7: Funding Cleanup of Illegal and Unauthorized MSW Disposal Sites

A. Brief Description of Issue

TCEQ has the authority per Texas Health and Safety Code (THSC) Chapter 361 to remediate unauthorized MSW disposal sites, but no appropriations to fund the cleanups.

B. Discussion

TCEQ defines illegal dumping as the disposal, transportation for disposal, or allowance of disposal of solid waste at any place that is not an authorized solid waste facility. The most common types of illegal dumping involve items that are difficult to dispose of due to additional disposal fees or increased time and effort for disposal, such as tires, landscape waste, construction debris, appliances, furniture, household garbage, chemicals, batteries, and fluorescent lights. Illegal dump sites also include once-authorized facilities that were abandoned without proper closure, with unauthorized waste, or in volumes that exceeded the allowed storage requirements.

Illegal dumping impacts public health and safety, decreases property values, discourages economic development, increases municipal operating costs, increases property taxes and service fees, and results in lost revenues. Furthermore, local government and private property owners incur significant operation and maintenance costs associated with the need to continuously clean up, haul, and dispose of illegally dumped wastes.

Illegal dump sites are not only unsightly and costly, but they are a threat to human health and the environment, as these sites do not have any of the environmental safety protection that authorized facilities have. Environmental and health issues from illegal dumping include surface and groundwater quality impacts from contaminated water runoff; flooding when waste blocks water flow in creeks, ravines, and culverts; air pollution, especially if fires occur; and an increased presence of vectors like rodents and mosquitoes that can carry diseases.

Under THSC Chapter 361, TCEQ is responsible for controlling all aspects of the management of municipal solid waste. The agency implements this authority by permitting various types of solid waste disposal facilities, including landfills, transfer stations, recycling, and composting facilities. Additionally, the agency conducts complaint and compliance investigations at authorized and unauthorized facilities.

THSC Chapter 361 grants TCEQ the ability to clean up illegal dump sites through two statutes:

- THSC Section 361.0145 allows TCEQ to make an immediate response to remediate a fire or other emergency involving solid waste to protect public health or safety. Funding for these cleanups comes from Fund 5000 and the agency can seek cost recovery.
- THSC Section 361.014, specifically 361.014(a)(9), allows TCEQ to create and operate a state-led MSW remediation program with funding from Fund 549. The agency can remediate unauthorized tire sites, solid waste dumps, or recycling sites and the agency can properly close abandoned MSW sites for which responsible parties are not financially able to provide cleanup or closure.

THSC Chapter 365 contains criminal penalties and fines for littering and illegal dumping. Many local jurisdictions also have enacted laws to criminally penalize illegal dumping, however charging a person with an offense is difficult and time-consuming as the responsible party must either be caught illegally

dumping waste or there must be sufficient evidence to prove culpability. Fines levied do not cover the remediation cost and typically, as described above, the responsible party does not have the financial means to perform the cleanup.

In FY 2019 and FY 2020, TCEQ conducted 112 and 68 compliance investigations, respectively, at unauthorized MSW sites, or illegal dumps, all of which stemmed from complaints submitted by the public. Investigations at illegal dump sites typically lead to enforcement actions because the responsible party is managing waste without proper authorizations. The agency is authorized to enforce site remediation through administrative orders and to seek penalties to deter future noncompliance. Additionally, cases may be referred to the Office of the Attorney General for enforcement through the courts and civil penalties. However, illegal dump sites are notoriously difficult to achieve successful cleanup because the responsible parties typically do not have the financial means to perform the remediation. Several illegal dump site enforcement cases have languished with no successful removal of waste. Through the Regional Solid Waste Grants Program, TCEQ provides pass-through grants to the 24 councils of government to fund solid waste management activities, including cleanup of illegal dump sites, litter pickup events, and funding local enforcement officers and activities. In the FY 2018-2019 grant cycle, 25 local enforcement grants for \$489,860, identified 1,684 violators and removed 10,800 tons of waste. While these grants help local communities, illegal dumping is still prevalent and ongoing.

The Don't Mess with Texas Water Program is a partnership between TCEQ, the Texas Department of Transportation, and participating local communities to place signs on major highways that notify drivers of a phone number to call to report illegal dumping.

There has been no recent legislation focused on appropriating funding to the agency for MSW site remediation. Previous legislation did focus on strengthening TCEQ's permitting and enforcement requirements, particularly regarding the Scrap Tire Program. However, this legislation, which did not pass, did not include new MSW site remediation abilities or appropriations.

C. Possible Solutions and Impact

The cleanup of any illegal dump site benefits everyone by improving public health and reducing the environmental impacts. The agency anticipates no or minimal negative impacts to regulated entities, interest groups, or the public.

The program could be funded by the Solid Waste Disposal Fund 5000 by expanding allowances for Fund 5000 cleanups to include cleanups allowed by Fund 0549. THSC Section 361.0145 could be amended to grant TCEQ the ability to run a state-led MSW remediation program, using similar statutory language for cleanups in THSC Section 361.014, funding would come from Fund 5000 instead of Fund 0549.