

# STOPPING ILLEGAL DUMPING IS UP TO US

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*Keep Texas Beautiful is honored to have Dr. Ockels' expertise on illegal dumping and the enforcement of illegal dumping in this first article. Dr. Ockels has generously offered his time to KTB over the years, most recently leading KTB's "Stop Trashing Texas - It's The Law" seminars. Dr. Ockels is the author of the very popular Local Control of Illegal Dumping: Texas 2002. This resource book is available for purchase by contacting John Ockels at jockels@msn.com, ordering online at www.DumpBook.com, or calling 903/786-6259. The cost is \$20 delivered, including tax with a portion going to KTB.*

Illegal dumping is rude and makes things ugly. It's also a crime. In fact, thanks to the great work of the Texas State Legislature, plain old illegal dumping in your community is currently punishable by fines up to \$10,000 and jail time of up to 2 years, depending on the circumstances. And that's just for dumping solid waste and litter. If what's dumped is hazardous or medical waste, or if someone is injured or killed in the process, the penalties increase fast—up to hundreds of thousands of dollars and years in the penitentiary. Additional criminal laws may also come into play in some cases, including such charges as manslaughter, fraud, money laundering, and engaging in organized criminal activity. Dumping is illegal, it may create serious health and safety hazards, and decreases property values. And together we can stop it.

Let me say right up front that if your community doesn't have trash service available to its citizens, it doesn't make much sense to hammer illegal dumpers. Assuring collection

services for all citizens is absolutely crucial. In fact, the law (Texas Health & Safety Code Chapter 363.113) requires that every municipality assure that solid waste services are available for all. That same law requires all counties of 30,000 or more to assure that these services are available to the folks out in the rural areas, too. These services don't have to be free of course, but they do have to be available or your elected officials are not doing their job. And commissioners' courts in smaller counties are well advised to provide citizen collection centers in the precincts—or get ready to spend a lot of money cleaning up even more illegal dumping sites.

But assuming that your officials have done their job, here comes the hard part. Like most crime suppression in Texas, stopping illegal dumping is the responsibility of local officials. Our primary state environmental agency, the Texas Natural Resource Conservation Commission (soon to become the Texas Commission on Environmental Quality) currently has about 3,000 employees. All but about a dozen of these good people are busy doing what's called "administrative enforcement," which includes such things as issuing permits, doing inspections, assessing administrative penalties against minor transgressors, and doing customer and public education. But their job doesn't include stopping illegal dumping. The other dozen at TNRCC are called "Special Investigations" and under the great leadership of Barbara Foremen their job is different. It's to put major environmental criminals in jail. And they do a good job of protecting our state from those companies and individuals that would ruin our environment for personal gain. If what's dumped is hazardous or medical waste, Barbara's folks will certainly be there to help, working on the situation directly, in cooperation with the EPA Criminal

Investigations Division, or by supporting local investigation and prosecution. But if it's straight dumping you want to stop, then Barbara's staff isn't designed to help you either. And that's fine, because it's always been in Texas that each community and its citizens are responsible for local law enforcement and it's no different with dumping. Just as some places are lawless and some more law-abiding, some communities insist on local enforcement of the state criminal laws against dumping ... and some don't. Which kind is yours?

The State Legislature has given your sheriff, police department, and county prosecutor all the laws they need to get the job done (see chart.) Two of the criminal laws that approach dumping from the perspective of maintaining the health of your community are Chapters 341 and 343 of the Texas Health & Safety Code. Chapter 341 applies everywhere in Texas and Chapter 343 is just for the rural, unincorporated areas. Both set the minimum standards for sanitation and public health and carry fairly minor penalties for any single violation. But, like a hill of fire ants where one sting is not so bad but the other hundred really hurt, each and every day of a continuing violation brings with it additional new penalties. If your county attorney applies these laws properly, you'll see some real messes cleaned-up fast.

The rest of the laws listed in the chart don't look at the health effect of the illegal dump. They go after the criminal acts of dumping, transporting to an unregistered site, and operating an unregistered dump. Most of the value of these will come from the systematic application by your community of Chapter 365 of the Texas Health & Safety Code. Here illegal dumping is classified as a Class C (fine to \$500 by a JP or municipal judge), Class B (fines to \$2,000 and jail time to 6

# NOTICE OF ILLEGAL DUMPING

The following violations may be charged for the dumping referenced on the attached letter. Littering and illegal dumping are both serious crimes in Texas and can result in large fines and/or time in jail or prison. The law enforcement office issuing this warning notice urges you to:

## AVOID JAIL AND FINES – KEEP TEXAS BEAUTIFUL!

months), or Class A (\$4,000/1 year) misdemeanor or as a State Jail Felony (\$10,000/2 years). What determines the potential penalty is the weight or volume of the waste being dumped and the reason for the dumping (commercial or non-commercial). For instance, commercial dumping (i.e., for economic gain, including avoiding disposal costs) of waste weighing 5 to 200 pounds is a Class A misdemeanor, punishable by a fine of up to \$4,000 and up to a year in jail. And dumping a closed barrel or drum of anything can land you in jail for up to two years. I don't know what else the State Legislature could do give your local prosecutor the laws he or she needs to stop dumping in your community. Of course, unless your local prosecutor decides to get tough on dumping, absolutely nothing will happen and your community will get worse and worse. Guaranteed. Because the amount of illegal dumping in any place seems to be largely related to population growth and economic activity, both of which we can expect more of in Texas.

A few of the provisions of Chapter 7 of the Texas Water Code are also shown on the chart. This is where the State Legislature grouped most of the major environmental criminal laws for easy reference, and the laws here cover water and other places too. For example TWC Chapter 7.145 sets a new 5-year felony penalty for any dumping in or adjacent to water in the state that pollutes or threatens to pollute the water. And Chapter 7.176 sets a five-year felony penalty for any dumping of waste motor oil anywhere, including dumping for such "good ideas" as dust suppression, killing weeds, and, yes, for killing fire ants. And both of these statutes carry major fines, too. Your county prosecutor would probably work with your district attorney, and possibly Barbara at TNRCC, to deal with crimes covered in this chapter. But getting the prosecution under way in these cases is still the responsibility of the local prosecutors.

So the real issue boils down to a simple question: How can you get your

CITATION	VIOLATION	PENALTY
<b>Non-Commercial Dumping (i.e., not for commercial purposes)</b>		
H&S 365.012(d)*	Under 5 pounds / 5 gallons of liquid	Fine to \$500
H&S 365.012(e)	5 to 500 pounds; 5 gallons to 100 cubic feet	Fine to \$2000 Jail to 6 months
H&S 365.012(f)	500 to 1,000 pounds; 100 to 200 cubic feet	Fine to \$4,000 Jail to 1 year
H&S 365.012(g)	Over 1,000 pounds / 200 cubic feet	\$10,000 fine State Jail to 2 years
<b>Commercial Dumping (i.e., for purposes of economic gain)</b>		
H&S 365.012(d)	Under 5 pounds / 5 gallons	Fine to \$500
H&S 365.012(f)	5 to 200 pounds; 5 gallons to 200 cubic feet	Fine to \$4,000 Jail to 1 year
H&S 365.012(g)	Over 200 pounds / 200 cubic feet	\$10,000 fine State Jail to 2 years
<b>Both Non-Commercial and Commercial Dumping</b>		
H&S 365.012(g)	Any waste contained in a closed barrel or drum	\$10,000 fine State Jail to 2 years
Note that using someone else's dumpster without his permission carries the same penalties as illegally dumping the same amount solid waste. Using someone else's dumpster without permission can also be prosecuted under Texas Penal Code 31.04.		
<b>Dumping Adjacent to Water in the State</b>		
TWC 7.145*	Dumping in or adjacent to water, including discharge from point-source	\$1,000 to \$100,000 fine Prison: to 5 years
<b>Waste Oil Dumping</b>		
TWC 7.176(a)(1)	Dumping into sewer or any water	\$1,000 to \$50,000 fine Prison: to 5 years
TWC 7.176(a)(2)	Dumping on ground or into landfill	
TWC 7.176(a)(4)	Dumping onto roads or land for dust suppression, weed abatement, etc.	
<b>Dumping Lead-Acid batteries (Car, boat, motorcycle, etc.)</b>		
TWC 7.185	Unauthorized disposal of lead-acid batteries	Fine to \$4,000 Jail: to 1 year
<b>Illegal Outdoor Burning</b>		
TWC 7.177	Burning in violation of Texas Outdoor Burning Regulations, 30 T.A.C. 111(b)	\$1,000 to \$50,000 fine Jail: to 6 months

\* "H&S" refers to the Texas Health and Safety Code; "TWC" refers to the Texas Water Code; Dumping of medical waste and/or hazardous waste is generally a felony in Texas and is not handled with a warning notice.

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county attorney motivated to stop dumping by prosecuting dumpers? It all comes down to education: first of the police who will enforce these laws as a normal part of their work, then of the locally elected officials who fund and manage law enforcement, and finally of the prosecutor himself or herself. And all of this comes fairly easily with increased public awareness, something KTB affiliates have

been great at for years!

So it turns out that stopping illegal dumping is an exercise in applied civics. Once the elected officials—especially the county prosecutor—realize that voters insist on having a cleaner community, amazing things happen. Cleaning up will become a new campaign promise. The state legislature has done its job. Now its time for us citizens to do ours. **KTB**