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2018-2019 CAPCOG Guide to
Texas Environmental Laws

Environmental Law Pocket Guide for Texas



Created by the Regional Environmental Task Force (RETF) and the Capital Area Council of Governments (CAPCOG) with funding provided by the Texas Commission on Environmental Quality (TCEQ).

Foreword

This book is intended as a convenient guide to environmental law enforcement. It is not a replacement for the full text version of the statutes. Although the intent is to provide a more compact form, the full text is the ultimate authority.

Every attempt has been made to ensure the accuracy of this text, however, no express or implied warranties or guarantees are made.

Sections in this book which were amended or added by act of the latest session of the legislature denote that following the title of the section.

Amendments: Text amended in the current year is denoted by ***bold italics***.

Added sections: Sections added by the latest legislative session have ADDED on the title line, AND are shown in ***bold italics***.

Deletions: Material deleted by legislative change is generally not included or identified. If deletions are the only change in the sections, a note will indicate that.

Some subsections are omitted as their content is not directly related to the intent of this guide. Where this occurs, the omission is represented by (***). The original numbering of the statutes is maintained where omissions occur.

Time Dependent Material

Contents of this book are applicable until the effective date of the next legislative enactments. In addition, material may be affected by existing or future appellate court decisions.

Sections affected in 2017

HSC §365.012	Illegal Dumping; Discarding Burning Material; Criminal Penalties	<i>Amended</i>
HSC §365.013	Rules And Standards; Criminal Penalty	<i>Amended</i>
30 TAC §327.1	Applicability	<i>Amended</i>
HSC §382.018	Outdoor Burning Of Waste And Combustible Material	<i>Amended</i>
Approaches to Outdoor Burning Violations		<i>Added</i>
<i>New non-statute outdoor burning material added</i>		
30 TAC §111.203	Definitions (Outdoor Burning)	<i>Amended</i>
TWC §7.187	Penalties	<i>Amended</i>
Heavy-Duty Vehicle Idling		<i>Added</i>

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Public Nuisance

Public Nuisance

“Property conditions interfering with the use and enjoyment of a neighborhood”

Where to find the Law:

- Public Health Nuisances
 - HSC §341
- General Public Nuisances
 - HSC §343
- Junked Vehicles
 - TC §683

Public Nuisance

Types of Public Nuisances:

1. Refuse- Rubbish (dry) and Garbage (wet)
2. Unsanitary Conditions such as organic wastes and vector magnets
3. Unsafe Conditions such as dilapidated buildings and abandoned swimming pools
4. Unsightly Conditions such as high weeds, filth, or objectionable material
5. Junked vehicles (self-propelled, not street legal, and wrecked or inoperable)

Public Nuisance

Helpful Tips:

1. LOCATION matters for many nuisances
2. Be aware of TIME REQUIREMENTS for proper notification
3. Some nuisance conditions may be protected by exemptions

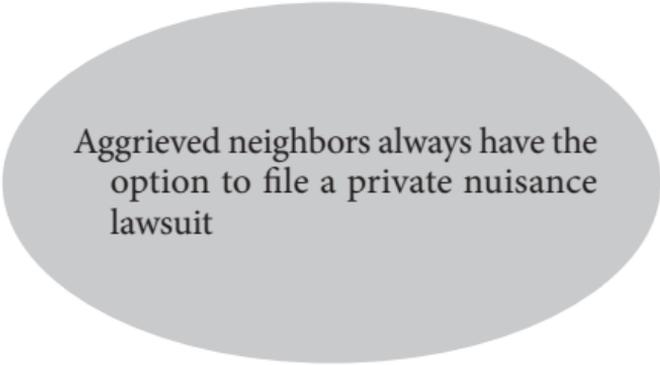
Be aware of exemptions for junked vehicles:

- 1) Licensed Junkyards
- 2) Antiques
- 3) Not visible from a public place

Public Nuisance

Enforcement:

1. Formal Abatement by the Health Authority HSC §341 and HSC §343
2. Class C Misdemeanor
3. Class B Misdemeanor (some subsequent offenses)



Aggrieved neighbors always have the option to file a private nuisance lawsuit

Public Nuisance Violations

Texas Health and Safety Code

HSC §341.011 Nuisance

Each of the following is a public health nuisance:

- (1) a condition or place that is a breeding place for flies and that is in a populous area;
- (2) spoiled or diseased meats intended for human consumption;
- (3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;
- (4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;
- (5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;
- (6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;
- (7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;
- (8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

- (9) a place or condition harboring rats in a populous area;
- (10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;
- (11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and
- (12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

General Public Nuisances

HSC §343.002 Definitions (Public nuisances)

In this chapter:

- (1) “Abate” means to eliminate or remedy:
 - (A) by removal, repair, rehabilitation, or demolition;
 - (B) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibition or control of access; and
 - (C) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.
- (2) “Building” means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (3) “Garbage” means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (4) “Neighborhood” means:
 - (A) a platted subdivision; or
 - (B) property contiguous to and within 300 feet of a platted subdivision.

- (5) “Platted subdivision” means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (6) “Premises” means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.
- (7) “Public street” means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.
- (8) “Receptacle” means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.
- (9) “Refuse” means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (10) “Rubbish” means nondecayable waste from a public or private establishment or residence.
- (10-a) “Undeveloped land” means land in a natural, primitive state that lacks improvements, infrastructure, or utilities and that is located in an unincorporated area at least 5,000 feet outside the boundaries of a home-rule municipality.
- (11) “Weeds” means all rank and uncultivated vegetable growth or matter that:
- (A) has grown to more than 36 inches in height; or
 - (B) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

- (12) “Flea market” means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

HSC §343.011 Public Nuisance

- (a) This section applies only to the unincorporated area of a county.
- (b) A person may not cause, permit, or allow a public nuisance under this section.
- (c) A public nuisance is:
- (1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
 - (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
 - (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;
 - (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; and
 - (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;
- (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;
- (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;
- (12) discarding refuse on property that is not authorized for that activity; or

- (13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.
- (d) This section does not apply to:
- (1) a site or facility that is:
 - (A) permitted and regulated by a state agency for the activity described by Subsection (c); or
 - (B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or
 - (2) agricultural land.
- (d-1) This subsection applies only to a county with a population of 3.3 million or more and only in an unincorporated area in the county that is at least 5,000 feet outside the boundaries of a home-rule municipality. Subsections (c)(3) and (4) apply only to undeveloped land in the county for which:
- (1) a condition on that land has been found to cause a public nuisance under those provisions in the preceding year; and
 - (2) a finding of public nuisance could have been applied to that condition when the condition first occurred.
- (e) In Subsection (d), “agricultural land” means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Illegal Dumping

Illegal Dumping

“Disposed of materials at an unauthorized location”

Where to find the Law:

- Illegal Dumping Crimes
 - o HSC §365.012
- Solid Waste Definitions
 - o HSC §361.003
 - o HSC §365.001
- Solid Waste Rules
 - o Municipal Solid Waste
 - 30 TAC §330
 - o Industrial Solid Waste
 - 30 TAC §335

Illegal Dumping

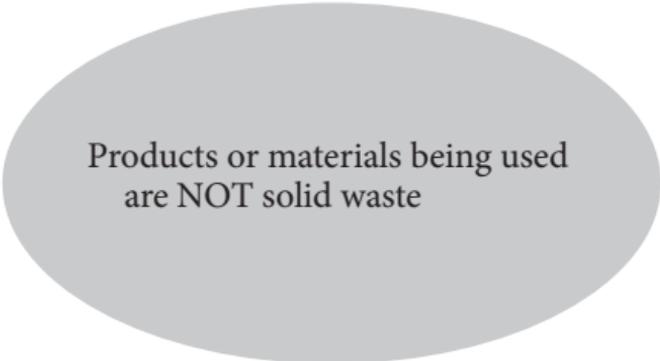
Types of Litter and Solid Waste:

1. Construction and demolition debris
2. Scrap vehicle and parts
3. Household waste
4. Landscape and brushy waste
5. Liquid wastes and sludges

Illegal Dumping

Helpful Tips:

1. DISPOSAL is determined by factors such as LOCATION, CONDITION, or DURATION
2. Anyone involved in the “chain of custody” is potentially responsible for the waste
3. There are TCEQ rules for proper STORAGE of waste
4. If there is accumulation or no source separation, it is NOT material being recycled
5. There are special requirements for disposal on one’s own property

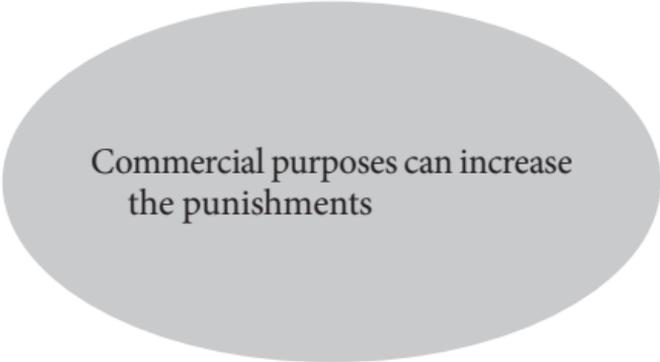


Products or materials being used
are NOT solid waste

Illegal Dumping

Enforcement (TPC Ch. 12):

1. Class C Misdemeanor (weighs less than 5 lbs. or has a volume of 5 gallons or less)
2. Class B Misdemeanor (weighs more than 5 lbs., but less than 500 lbs., or has a volume of more than 5 gallons, but less than 100 cubic feet)
3. Class A Misdemeanor (weighs 500 lbs. or more, but less than 1,000 lbs., or has a volume of 100 cubic feet or more, but less than 200 cubic feet)
4. State Jail Felony (weighs 1,000 lbs. or more or has a volume of 200 cubic feet or more)



Commercial purposes can increase the punishments

Solid Waste Violations

Texas Health and Safety Code

HSC §365.011 Definitions (Litter)

In this subchapter:

- (1) “Approved solid waste site” means:
 - (A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;
 - (B) a solid waste site licensed by a county under Chapter 361; or
 - (C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.
- (2) “Boat” means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.
- (3) “Commercial purpose” means the purpose of economic gain.
- (4) “Commercial vehicle” means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.
- (5) “Dispose” and “dump” mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.
- (6) “Litter” means:
 - (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.
- (7) “Motor vehicle” has the meaning assigned by Section 541.201, Transportation Code.
- (8) “Public highway” means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:
- (A) is opened to the public for vehicular traffic;
 - (B) is used as a public recreational area; or
 - (C) is under the state’s legislative jurisdiction through its police power.
- (9) “Solid waste” has the meaning assigned by Section 361.003.

**HSC §365.012 Illegal Dumping; Discarding
Burning Material; Criminal Penalties
Amended 2017**

- (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-

of-way, on other public or private property, or into inland or coastal water of the state.

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under Subsection (a), (b), or (c) is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) An offense under Subsection (a-1) is a misdemeanor under this subsection if the litter or other solid waste to which the offense applies weighs less than 500 pounds or has a volume of less than 100 cubic feet and is punishable by:

(1) a fine not to exceed \$500;

(2) confinement in jail for a term not to exceed 30 days; or

(3) both such fine and confinement.

(e) An offense under Subsection (a), (b), or (c) is a Class B misdemeanor if the litter or other solid waste to which the

offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

- (f) An offense under this section is a Class A misdemeanor if:
 - (1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or
 - (2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.
- (g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:
 - (1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;
 - (2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or
 - (3) is contained in a closed barrel or drum.
- (h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.
- (i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

- (j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.
- (k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.
- (l) This section does not apply to an individual's disposal of litter or other solid waste if:
 - (1) the litter or waste is generated on land the individual owns;
 - (2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
 - (3) the disposal occurs on land the individual owns; and
 - (4) the disposal is not for a commercial purpose.
- (m) A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.
- (n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.
- (o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.
- (p) It is an affirmative defense to prosecution under Subsection (a-1) that the person discarded the lighted litter in connection

with controlled burning the person was conducting in the area into which the lighted litter was discarded.

- (q) The operator of a public conveyance in which smoking tobacco is allowed shall post a sign stating the substance of Subsections (a-1) and (d-1) in a conspicuous place within any portion of the public conveyance in which smoking is allowed.
- (r) If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Subsection (a), the actor may be prosecuted only under Subsection (a-1). If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Chapter 28, Penal Code, the actor may be prosecuted under Subsection (a-1) or Chapter 28, Penal Code, but not both.
- (s) ***On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.***

HSC §365.013 Rules And Standards; Criminal Penalty
Amended 2017

- (a) The Texas Natural Resource Conservation Commission shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.
- (b) A person commits an offense if the person violates a rule adopted under this section.
- (c) An offense under this section is a Class A misdemeanor.
- (d) ***On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.***

HSC §365.014 Application Of Subchapter; Defenses; Presumptions

- (a) This subchapter does not apply to farmers:
- (1) in handling anything necessary to grow, handle, and care for livestock; or
 - (2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.
- (b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.
- (c) It is an affirmative defense to prosecution under Section 365.012 that:
- (1) the storage, processing, or disposal took place on land owned or leased by the defendant;
 - (2) the defendant received the litter or other solid waste from another person;
 - (3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and
 - (4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

HSC §365.035 Prohibition On Possessing Glass Containers Within Boundary Of State-Owned Riverbed

- (a) In this section, “glass container” means a glass container designed to contain a beverage, including a bottle or jar.

- (b) A person commits an offense if the person knowingly possesses a glass container within the boundaries of a state-owned riverbed in a county:
 - (1) that is located within 85 miles of an international border; and
 - (2) in which at least four rivers are located.
- (c) An offense under this section is a Class C misdemeanor.
- (d) It is a defense to prosecution under Subsection (b) that the person who possessed the glass container:
 - (1) did not transport the glass container into the boundaries of the riverbed;
 - (2) possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle; or
 - (3) is the owner of property adjacent to the section of the riverbed in which the person possessed the glass container.
- (e) It is an exception to the application of Subsection (b) that the person possessed the glass container only for the purpose of water sampling or conducting scientific research as authorized by:
 - (1) a governmental entity;
 - (2) a utility as defined by Section 11.004, Utilities Code;
 - (3) a retail public utility as defined by Section 13.002, Water Code;
 - (4) a power generation company as defined by Section 31.002, Utilities Code;
 - (5) a surface coal mining and reclamation operation, as defined by Section 134.004, Natural Resources Code; or
 - (6) a school-sponsored or university-sponsored educational activity.

**30 TAC §330.13 Waste Management Activities
Exempt from Permitting, Registration, or
Notification**

- (a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual's own land and is not required to comply with § 330.19 of this title (relating to Deed Recordation) provided that:
- (1) the litter or waste is generated on land that the individual owns;
 - (2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
 - (3) the disposal occurs on land that the individual owns;
 - (4) the disposal is not for a commercial purpose;
 - (5) the waste disposed of is not hazardous waste or industrial waste;
 - (6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and
 - (7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.

30 TAC §330.15 General Prohibitions

- (a) A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW), or the use or operation

of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under Texas Health and Safety Code, § 361.092, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

- (1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;
- (2) the creation and maintenance of a nuisance; or
- (3) the endangerment of the human health and welfare or the environment.

30 TAC §330.209 Storage Requirements

- (a) All solid waste shall be stored in such a manner that it does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and shall be contained or bundled so as not to result in litter. It shall be the responsibility of the occupant of a residence or the owner or manager of an establishment to utilize storage containers of an adequate size and strength, and in sufficient numbers, to contain all solid waste that the residence or establishment generates in the period of time between collections.
- (b) An on-site storage area for source-separated or recyclable materials should be provided that is separate from a transfer station or process area. Control of odors, vectors, and windblown waste from the storage area shall be maintained.
- (c) For the process area of transfer stations that recover material from solid waste that contains putrescibles and for liquid waste processing units, processed and unprocessed waste and recycled materials shall be stored in an enclosed building, vessel, or container.

30 TAC §330.211 Approved Containers

All solid waste containing food wastes shall be stored in covered or closed containers that are leakproof, durable, and designed for safe handling and easy cleaning.

- (1) Nonreusable containers. Nonreusable containers shall be of suitable strength to minimize animal scavenging or rupturing during collection operations.
- (2) Reusable containers. Reusable containers must be maintained in a clean condition so that they do not constitute a nuisance and to retard the harborage, feeding, and propagation of vectors.
 - (A) All containers to be emptied manually must be capable of being serviced without the collector coming into physical contact with the solid waste.
 - (B) Containers to be mechanically handled must be designed to prevent spillage or leakage during storage, handling, or transport.

Water Pollution

Water Pollution

“Discharging pollutants into or near water without permission”

Where to find the Law:

- Unauthorized Discharge
 - TWC §7.147 (Misdemeanor)
 - TWC §7.145 (Felony)
- Water Quality Definitions
 - TWC §26.001
- Used Motor Oil
 - TWC §7.716
- Lead Acid Batteries
 - TWC §7.185

Water Pollution

Types of Pollutants:

1. Refuse
2. Oil
3. Commercial/Industrial
4. Sewage
5. Storm water runoff

Water Pollution

Helpful Tips:

1. “WATER in the state” includes: lakes, ponds, rivers, creeks, aquifers, wetlands, storm drains, sanitary sewers, or any watercourse (wet or dry)
2. ALWAYS check to see if their discharge is permitted (generally, specifically, or by rule)
3. Storm water discharges from some industrial or construction sites are regulated
4. Accidental spills of certain amounts must be reported to the TCEQ within 24 hours
5. Both point and non-point discharges are regulated

Both point and non-point discharges are regulated

Water Pollution

Enforcement (TWC § 7.187):

1. Super Misdemeanor—INTO water only (strict liability)
2. Super Felony—both INTO water or NEAR water (intentional or knowing)

Pollution:

Contamination of water,
includes chemical, thermal,
physical, or biological changes

Water Pollution Violations

Texas Water Code

TWC §7.145 Intentional Or Knowing Unauthorized Discharge

- (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant:
- (1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency; or
 - (2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.
- (b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.
- (c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

TWC §7.147 Unauthorized Discharge

- (a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant:
- (1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; or
 - (2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million

following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

- (b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.
- (c) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both.
- (d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

TWC §7.150 Failure To Notify Or Report

- (a) A person commits an offense if the person intentionally or knowingly fails to notify or report to the commission as required under Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.
- (b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.
- (c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

TWC §26.001 Definitions (Water Quality Control)

As used in this chapter:

- (1) “Board” means the Texas Water Development Board.
- (2) “Commission” means the Texas Natural Resource Conservation Commission.
- (3) “Executive administrator” means the executive administrator of the Texas Water Development Board.
- (4) “Executive director” means the executive director of the Texas Natural Resource Conservation Commission.
- (5) “Water” or “water in the state” means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands,

marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

- (6) “Waste” means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.
- (7) “Sewage” means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.
- (8) “Municipal waste” means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.
- (9) “Recreational waste” means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.
- (10) “Agricultural waste” means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:
 - (A) includes:
 - (i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or
 - (ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal

feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(11) “Industrial waste” means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) “Other waste” means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal

feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

- (B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.
- (14) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
- (15) “Sewer system” means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.
- (16) “Treatment facility” means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.
- (17) “Disposal system” means any system for disposing of waste, including sewer systems and treatment facilities.
- (18) “Local government” means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

- (19) “Permit” means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.
- (20) “To discharge” includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.
- (21) “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.
- (22) “Identified state supplement to an NPDES permit” means any part of a permit on which the commission has entered a written designation to indicate that the commission has adopted that part solely in order to carry out the commission’s duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.
- (23) “NPDES” means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.
- (24) “Treatment works” means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse

water at the most economical cost over the estimated life of the works, including:

- (A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;
 - (B) extensions, improvements, remodeling, additions, and alterations of the items in Paragraph (A) of this subdivision;
 - (C) elements essential to provide a reliable recycled supply such as standby treatment units and clear-well facilities;
 - (D) any works, including sites and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment;
 - (E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; and
 - (F) facilities to provide for the collection, control, and disposal of waste heat.
- (25) “Person” means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.
- (26) “Affected county” is a county to which Subchapter B, Chapter 232, Local Government Code, applies.

30 Texas Administrative Code

30 TAC §327.1 Applicability ***Amended 2017***

- (a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state.
- (b) This chapter does not apply to:

- (1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the Railroad Commission of Texas is the on-scene coordinator, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C, D, E, F, and G;
- (2) spills or discharges from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, § 26.131;
- (3) releases only to air;
- (4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);
- (5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (Underground and Aboveground Storage Tanks);
- (6) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;
- (7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State of Texas; provided, however, that *unauthorized* discharges shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement;
- (8) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency under 40 Code of Federal Regulations §302.8;

(9) discharges or spills occurring during the normal course of rail transportation; *or*

(10) accidental discharges or spills of treated or untreated wastewater that are reported in accordance with §305.132 of this title (relating to Special Conditions for Certain Wastewater Discharges).

30 TAC §327.2 Definitions (Spill Prevention And Control)

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agency on-scene coordinator--The official designated by the executive director to coordinate and direct agency responses, or to oversee private responses to discharges or spills.
- (2) Coastal waters--The definition of Coastal waters as it appears in Title 31, Texas Administrative Code, § 19.2 (Definitions) of the Texas General Land Office rules.
- (3) Discharge or spill--An act or omission by which oil, hazardous substances, waste, or other substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas.
- (4) Emergency response team--A unit of the agency that is responsible for the coordination of response to spills and discharges under the agency's jurisdiction.
- (5) Environment--Waters in the state, land surface or subsurface strata, for purposes of this chapter only.
- (6) Facility--Any structure or building, including contiguous land, or equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor

vehicle, rolling stock, aircraft, or any site or area where a discharge or spill has occurred or may occur.

- (7) Hazardous substance--Any substance designated as such by the administrator of the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601-9675, regulated under the Clean Water Act, § 311, 33 USC 1321, or designated by the commission.
- (8) Industrial solid waste--Solid waste, as defined in § 335.1 of this title (relating to Definitions), resulting from or incidental to any process of industry or manufacturing, or mining, or agricultural operations, which may include hazardous waste as defined in § 335.1 of this title.
- (9) Oil--Oil of any kind or in any form including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include used oil, petroleum product, or oil designated as a hazardous substance in 40 CFR § 302.4.
- (10) Other substances--Substances that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water in the state.
- (11) Petroleum product--A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not necessarily limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

- (12) Petroleum storage tank (PST) exempted facilities-- Electric service facilities including generation, transmission, distribution equipment and transformers; petrochemical plants; petroleum refineries; bulk loading facilities; and pipelines that are exempted from the Aboveground Storage Tank (AST) program under § 334.123(a)(9) and (b) of this title (relating to Statutory Exemptions for ASTs), and § 334.124(a)(4) of this title (relating to Commission Exclusions for ASTs).
- (13) Pipeline--A pipeline is:
- (A) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:
 - (i) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §§ 1671, et seq); or
 - (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §§ 2001, et seq).
 - (B) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:
 - (i) the Natural Resources Code, Chapter 111;
 - (ii) the Natural Resources Code, Chapter 117; or
 - (iii) Texas Civil Statutes, Article 6053-1 and Article 6053-2.
- (14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
- (15) Responsible person--A person who is:

- (A) the owner, operator, or demise charterer of a vessel from which a discharge or spill emanates; or
 - (B) the owner or operator of a facility from which a discharge or spill emanates; or
 - (C) any other person who causes, suffers, allows, or permits a discharge or spill.
- (16) Used oil--Oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.
- (17) Vessel--Every description of watercraft, used or capable of being used as a means of transportation on the water.
- (18) Water or water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface waters, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

30 TAC §327.3 Notification Requirements

- (a) Reportable discharge or spill. A reportable discharge or spill is a discharge or spill of oil, petroleum product, used oil, hazardous substances, industrial solid waste, or other substances into the environment in a quantity equal to or greater than the reportable quantity listed in § 327.4 of this title (relating to Reportable Quantities) in any 24-hour period.
- (b) Initial notification. Upon the determination that a reportable discharge or spill has occurred, the responsible person shall notify the agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge.

- (c) Method of notification. The responsible person shall notify the agency in any reasonable manner including by telephone, in person, or by any other method approved by the agency. In all cases, the initial notification shall provide, to the extent known, the information listed in subsection (d) of this section. Notice provided under this section satisfies the federal requirement to notify the State Emergency Response Commission in the State of Texas. The responsible person shall notify one of the following:
- (1) the State Emergency Response Center at 1-800-832-8224;
 - (2) during normal business hours only, the regional office for the agency region in which the discharge or spill occurred; or
 - (3) the agency at the agency 24-hour spill reporting number.
- (d) Information required in initial notification. The initial notification shall provide, to the extent known, the information in the following list. Copies of spill reports prepared for other governmental agencies shall satisfy this requirement if they contain, or are supplemented to contain, all the information required by this subsection. The initial notification shall contain:
- (1) the name, address and telephone number of the person making the telephone report;
 - (2) the date, time, and location of the spill or discharge;
 - (3) a specific description or identification of the oil, petroleum product, hazardous substances or other substances discharged or spilled;
 - (4) an estimate of the quantity discharged or spilled;
 - (5) the duration of the incident;
 - (6) the name of the surface water or a description of the waters in the state affected or threatened by the discharge or spill;

- (7) the source of the discharge or spill;
 - (8) a description of the extent of actual or potential water pollution or harmful impacts to the environment and an identification of any environmentally sensitive areas or natural resources at risk;
 - (9) if different from paragraph (1) of this subsection, the names, addresses, and telephone numbers of the responsible person and the contact person at the location of the discharge or spill;
 - (10) a description of any actions that have been taken, are being taken, and will be taken to contain and respond to the discharge or spill;
 - (11) any known or anticipated health risks;
 - (12) the identity of any governmental representatives, including local authorities or third parties, responding to the discharge or spill; and
 - (13) any other information that may be significant to the response action.
- (e) Update notification. The responsible person shall notify the agency as soon as possible whenever necessary to provide information that would trigger a change in the response to the spill or discharge.
- (f) Correction of records. Notifying the agency that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred. Furthermore, if the responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the agency documenting that determination. If the executive director agrees with that determination, the executive director will note the determination in commission records. If the executive

director disagrees with that determination, the executive director will notify the responsible person within 30 days.

- (g) Notification of local governmental authorities. If the discharge or spill creates an imminent health threat, the responsible person shall immediately notify and cooperate with local emergency authorities (fire department, fire marshal, law enforcement authority, health authority, or Local Emergency Planning Committee (LEPC), as appropriate). The responsible party will cooperate with the local emergency authority in providing support to implement appropriate notification and response actions. The local emergency authority, as necessary, will implement its emergency management plan, which may include notifying and evacuating affected persons. In the absence of a local emergency authority, the responsible person shall take reasonable measures to notify potentially affected persons of the imminent health threat.
- (h) Notification to property owner and residents. As soon as possible, but no later than two weeks after discovery of the spill or discharge, the responsible person shall reasonably attempt to notify the owner (if identifiable) or occupant of the property upon which the discharge or spill occurred as well as the occupants of any property that the responsible person reasonably believes is adversely affected.
- (i) Additional notification required.
 - (1) Except as noted in paragraph (2) of this subsection, complying with the notification requirements set forth in this section does not relieve, satisfy, or fulfill any other notification requirements imposed by permit or other local, state, or federal law.

- (2) Notice provided under this section satisfies the federal requirement to notify the State Emergency Response Commission in the State of Texas.
- (j) Alternative notification plans.
- (1) Responsible persons in charge of activities and facilities may submit and implement an alternative notification plan. This alternative notification plan shall comply with the Texas Water Code, § 26.039. Responsible persons shall obtain the agency's written approval before implementing any alternative notification plan.
 - (2) Upon approval of the agency regional manager, responsible persons may provide the initial notification by facsimile to the regional office during normal business hours.

30 TAC §327.4 Reportable Quantities

- (a) Hazardous substances. The reportable quantities for hazardous substances shall be:
- (1) for spills or discharges onto land--the quantity designated as the Final Reportable Quantity (RQ) in Table 302.4 in 40 CFR § 302.4; or
 - (2) for spills or discharges into waters in the state--the quantity designated as the Final RQ in Table 302.4 in 40 CFR § 302.4, except where the Final RQ is greater than 100 pounds in which case the RQ shall be 100 pounds.
- (b) Oil, petroleum product, and used oil.
- (1) The RQ for crude oil and oil other than that defined as petroleum product or used oil shall be:
 - (A) for spills or discharges onto land--210 gallons (five barrels); or
 - (B) for spills or discharges directly into water in the state--quantity sufficient to create a sheen.
 - (2) The RQ for petroleum product and used oil shall be:

- (A) except as noted in subparagraph (B) of this paragraph, for spills or discharges onto land--25 gallons;
 - (B) for spills or discharges to land from PST exempted facilities--210 gallons (five barrels); or
 - (C) for spills or discharges directly into water in the state--quantity sufficient to create a sheen.
- (c) Industrial solid waste or other substances. The RQ for spills or discharges into water in the state shall be 100 pounds.

30 TAC §327.5 Actions Required

- (a) The responsible person shall immediately abate and contain the spill or discharge and cooperate fully with the executive director and the local incident command system. The responsible person shall also begin reasonable response actions which may include, but are not limited to, the following actions:
- (1) arrival of the responsible person or response personnel hired by the responsible person at the site of the discharge or spill;
 - (2) initiating efforts to stop the discharge or spill;
 - (3) minimizing the impact to the public health and the environment;
 - (4) neutralizing the effects of the incident;
 - (5) removing the discharged or spilled substances; and
 - (6) managing the wastes.
- (b) Upon request of the local government responders or the executive director, the responsible person shall provide a verbal or written description, or both, of the planned response actions and all actions taken before the local governmental responders or the executive director arrive. When the agency on-scene coordinator requests this information, it is subject to possible additional response action requirements by the

executive director. The information will serve as a basis for the executive director to determine the need for:

- (1) further response actions by the responsible person;
 - (2) initiating state funded actions for which the responsible person may be held liable to the maximum extent allowed by law; and
 - (3) subsequent reports on the response actions.
- (c) Except for discharges or spills occurring during the normal course of transportation about which carriers are required to file a written report with the U.S. Department of Transportation under 49 CFR § 171.16, the responsible person shall submit written information, such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TNRCC regional manager within 30 working days of the discovery of the reportable discharge or spill. The regional manager has the discretion to extend the deadline. The documentation shall contain one of the following items:
- (1) A statement that the discharge or spill response action has been completed and a description of how the response action was conducted. The statement shall include the initial report information required by § 327.3(c) of this title (relating to Notification Requirements). The executive director may request additional information. Appropriate response actions at any time following the discharge or spill include use of the Texas Risk Reduction Program rules in Chapter 350 of this title (relating to Texas Risk Reduction Program).
 - (2) A request for an extension of time to complete the response action, along with the reasons for the request. The request shall also include a projected work schedule outlining the time required to complete the response

action. The executive director may grant an extension up to six months from the date the spill or discharge was reported. Unless otherwise notified by the appropriate regional manager or the Emergency Response Team, the responsible person shall proceed according to the terms of the projected work schedule.

- (3) A statement that the discharge or spill response action has not been completed nor is it expected to be completed within the maximum allowable six month extension. The statement shall explain why completion of the response action is not feasible and include a projected work schedule outlining the remaining tasks to complete the response action. This information will also serve as notification that the response actions to the discharge or spill will be conducted under the Texas Risk Reduction Program rules in Chapter 350 of this title (relating to Texas Risk Reduction Program).

Miscellaneous Pollution Violations

Texas Water Code

TWC §7.176 Violations Relating To Handling Of Used Oil

- (a) A person commits an offense if the person:
- (1) intentionally discharges used oil into:
 - (A) a sewer or septic tank; or
 - (B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;
 - (2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills, unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals;
 - (3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil within the state:
 - (A) in violation of standards or rules for the management of used oil; or
 - (B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter;

- (4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;
 - (5) violates an order of the commission to cease and desist an activity prohibited by this section or a rule applicable to a prohibited activity; or
 - (6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.
- (b) It is an exception to the application of this section that a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.
- (c) It is an exception to the application of Subsection (a)(2) that the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.
- (d) Except as provided by this subsection, an offense under this section is punishable under Section 7.187(1)(B) or Section 7.187(2)(F), or both. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C) or Section 7.187(2)(H) or both.

TWC §7.185 Knowing Or Intentional Unauthorized Disposal Of Lead-Acid Batteries

- (a) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided by Section 361.451, Health and Safety Code.
- (b) An offense under this section is a Class A misdemeanor.

Outdoor Burning

Outdoor Burning

“Outside Burning in violation of TCEQ Rules”

Where to find the Law:

- Outdoor Burning Statutes
 - TWC §7.177
 - TWC §7.187
 - HSC §382.018
 - HSC §382.085
- TCEQ Burning Rules
 - 30 TAC §111
 - 30 TAC §101

Outdoor Burning

Types of Improper Burn Materials:

1. Tires
2. Insulated wire
3. Treated lumber
4. Most plastics
5. Non-wood construction or demolition debris
6. Oil and chemicals
7. Potentially explosive materials
8. Furniture and carpet
9. Items with rubber

Outdoor Burning

Helpful Tips:

1. Most burning violations are Class C misdemeanors
2. Typically, trash cannot be burned if it is brought in from off-site.
3. Burning that creates nuisance conditions is not allowed.
4. Illegal Outdoor Burning is not the same thing as a Burn Ban.
5. If it fits the criteria, a disposal burn may be filed as Illegal Dumping

Burning domestic waste is allowed if TCEQ Rules are followed

Outdoor Burning

Three Possible Approaches to Outdoor Burning Violations:

Class C, B, or A Misdemeanors

1. Outdoor Burning Rules Approach
 - a. TWC §7.177 and HSC §382.018
 - b. Class C mostly
 - c. Class A or B for subsequent offenses
 - d. Class A for certain materials
2. Illegal Dumping Approach
 - a. HSC §365.012 and §365.013
 - b. Class C mostly
 - c. Class A or B for subsequent offenses
 - d. Class A for certain materials
3. Air Contaminants Approach
 - a. TWC §7.177 and HSC §382.085
 - b. “Super Misdemeanor” (up to 180 days jail or fine \$1,000-\$50,000)

Outdoor Burning

Class C Outdoor Burning Rule Violations

List #1- TWC §7.187 (b)

1. Tires
2. Insulation on electrical wire or cable
3. Treated lumber
4. Plastics
5. Non-wood construction or demolition materials
6. Furniture and Carpet
7. Items containing natural or synthetic rubber

List #2- 30 TAC §111.219-

Allowable Outdoor Burning Requirements

1. Wind direction, speed and other meteorological conditions
2. Sensitive receptors
3. Completed on the same day not later than one hour before sunset
4. No blowing smoke

Warning: These specific prohibitions may not apply to burning domestic waste.

Class A Outdoor Burning Rule Violations

List #3- TWC §7.187 (b)

- Heavy oils
- Asphaltic materials
- Potentially explosive materials
- Chemical wastes

Outdoor Burning

Subsequent Offenses under Outdoor Burning Rules

They may be Class B or Class A depending on what is being burned.

<i>First Offense + Subsequent Offense = Penalty</i>		
<i>List #1</i>	<i>List #2</i>	<i>Class B</i>
<i>List #2</i>	<i>List #2</i>	<i>Class B</i>
<i>List #3</i>	<i>List #2</i>	<i>Class A</i>

Outdoor Burning

Enforcement:

1. Class C Misdemeanor (General burning violations **on List 2, Burning of List 1 materials**)
2. Class B Misdemeanors (**Enhanced offenses**)
3. Class A Misdemeanor (**Burning of List 3 materials, enhanced offenses**)
4. Super Misdemeanor (**Burning resulting in Nuisance air contamination, excessive fumes or smoke**)

Applicability of some TCEQ Rules may vary according to different regions of the state.

Outdoor Burning Violations

Texas Health and Safety Code

HSC §382.003 Definitions (Clean Air Act)

In this chapter:

- (2) “Air contaminant” means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.
- (3) “Air pollution” means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:
- (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or
- (B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

HSC §382.018 Outdoor Burning Of Waste And Combustible Material ***Amended 2017***

- (a) Subject to Section 352.082, Local Government Code, and except as provided by Subsections (b) and (d), the commission by rule may control and prohibit the outdoor burning of waste and combustible material and may include requirements concerning the particular method to be used to control or abate the emission of air contaminants resulting from that burning.
- (b) The commission by rule shall authorize outdoor burning of waste if the waste:

- (1) consists of trees, brush, grass, leaves, branch trimmings, or other plant growth; and
- (2) is burned:
 - (A) in an area that meets the national ambient air quality standards and that does not contain any part of a city that does not meet national ambient air quality standards; and
 - (B) on the property on which it was generated and by the owner of the property or any other person authorized by the owner.
- (c) Rules adopted under Subsection (b) may not:
 - (1) require prior commission approval of the burning; or
 - (2) authorize the burning only when no practical alternative to burning exists.
- (d) The commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branch trimmings, or other plant growth if:
 - (1) the person burning the waste is doing so at a site:
 - (A) designated for consolidated burning of waste generated from specific residential properties;
 - (B) located in a county with a population of less than 50,000;
 - (C) located outside of a municipality; and
 - (D) supervised at the time of the burning by:
 - (i) an employee of a fire department who is part of the fire protection personnel, as defined by Section 419.021, Government Code, of the department and is acting in the scope of the person's employment; **or**
 - (ii) ***a volunteer firefighter acting in the scope of the firefighter's volunteer duties; and***

- (2) the waste was generated from a property for which the site is designated.
- (e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.
- (f) If conduct that violates a rule adopted under this section also violates a municipal ordinance, that conduct may be prosecuted only under the municipal ordinance, provided that:***
- (1) the violation is not a second or subsequent violation of a rule adopted under this section or a municipal ordinance; and***
 - (2) the violation does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes.***
- (g) Notwithstanding Section 7.002, Water Code, the provisions of this section and rules adopted under this section may be enforced by a peace officer as described by Article 2.12, Code of Criminal Procedure.***

HSC §382.085 Unauthorized Emissions Prohibited

- (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.
- (b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

Texas Water Code

TWC §7.177 Violations Of Clean Air Act

- (a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:
- (1) Section 382.0518(a), Health and Safety Code;
 - (2) Section 382.054, Health and Safety Code;
 - (3) Section 382.056(a), Health and Safety Code;
 - (4) Section 382.058(a), Health and Safety Code; or
 - (5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.
- (b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.
- (c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

30 Texas Administrative Code (Outdoor Burning)

30 TAC §111.201 General Prohibition

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director. The term "executive director," as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

30 TAC §111.203 Definitions (Outdoor Burning) *Amended 2017*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Commission on Environmental

Quality (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this *subchapter*, have the following meanings, unless the context clearly indicates otherwise.

- (1) ***Certified and Insured Prescribed Burn Manager***--A person with ultimate authority and responsibility for a prescribed burn, who has been certified by the Prescribed Burning Board of the Texas Department of Agriculture. The certification issued by the Prescribed Burning Board must be considered effective, and to have met the certification requirements found in 4 TAC Chapter 226 (relating to Requirements for Certification by the Board), at the time the prescribed burn is conducted.
- (2) **Extinguished**--The absence of any visible flames, glowing coals, or smoke.
- (3) **Landclearing operation**--The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access, or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include ***prescribed burning or*** burning following clearing for ecological restoration.
- (4) **Neighborhood**--A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.
- (5) **Practical alternative**--An economically, technologically, ecologically, and logistically viable option.

- (6) Prescribed burn--The controlled application of fire to naturally occurring *or naturalized* vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.
- (7) Refuse--Garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (8) Structure containing sensitive receptor(s)--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term “man-made structure” does not include such things as range fences, roads, bridges, hunting blinds, or facilities used solely for the storage of hay or other livestock feeds. The term “sensitive live vegetation” is defined as vegetation that has potential to be damaged by smoke and heat, examples of which include, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.
- (9) Sunrise/Sunset--Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.
- (10) Wildland--Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

30 TAC §111.205 Exception for Fire Training

- (a) Outdoor burning shall be authorized for training fire-fighting personnel when requested in writing and when authorized either verbally or in writing by the local air pollution control agency. In the absence of such local entities, the appropriate commission regional office shall be notified. The burning shall

be authorized if notice of denial from the local air pollution control agency, or commission regional office is not received within 10 working days after the date of postmark or the date of personal delivery of the request.

- (b) Facilities dedicated solely for fire-fighting training, at which training routinely will be conducted on a frequency of at least once per week, shall submit an annual written notification of intent to continue such training to the appropriate commission regional office and any local air pollution control agency.
- (c) Facilities dedicated solely for fire-fighting training, at which training is conducted less than weekly, shall provide an annual written notification of intent, with a telephone or electronic facsimile notice 24 hours in advance of any scheduled training session. No more than one such notification is required for multiple training sessions scheduled within any one-week period, provided the initial telephone/facsimile notice includes all such sessions. Both the written and telephone notifications shall be submitted to the appropriate commission regional office and any local air pollution control agency.
- (d) Authorization to conduct outdoor burning under this provision may be revoked by the executive director if the authorization is used to circumvent other prohibitions of this subchapter.

30 TAC §111.207 Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth

Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of § 111.219(7) of this title

(relating to General Requirements for Allowable Outdoor Burning).

30 TAC §111.209 Exception for Disposal Fires

Except as provided in Local Government Code, § 352.082, outdoor burning is authorized for the following:

- (1) domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term “domestic waste” is defined in § 101.1 of this title (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic waste that cannot be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances;
- (2) diseased animal carcass burning when burning is the most effective means of controlling the spread of disease;
- (3) veterinarians in accordance with Texas Occupations Code, § 801.361, Disposal of Animal Remains;
- (4) on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth, by the owner of the property or any other person authorized by the owner, and when the material is generated only from that property:
 - (A) in a county that is part of a designated nonattainment area or that contains any part of a municipality that extends into a designated nonattainment area; if the plant growth

was generated as a result of right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists. Such burning is subject to the requirements of § 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). Commission notification or approval is not required; or

(B) in a county that is not part of a designated nonattainment area and that does not contain any part of a municipality that extends into a designated nonattainment area; this provision includes, but is not limited to, the burning of plant growth generated as a result of right-of-way maintenance, landclearing operations, and maintenance along water canals. Such burning is subject to local ordinances that prohibit burning inside the corporate limits of a city or town and that are consistent with the Texas Clean Air Act, Chapter 382, Subchapter E, Authority of Local Governments, and the requirements of § 111.219(3), (4), (6), and (7) of this title. Commission notification or approval is not required.

(5) at a site designated for consolidated burning of waste generated from specific residential properties. A designated site must be located outside of a municipality and within a county with a population of less than 50,000. The owner of the designated site or the owner's authorized agent shall:

(A) post at all entrances to the site a placard measuring a minimum of 48 inches in width and 24 inches in height and containing, at a minimum, the words "DESIGNATED BURN SITE - No burning of any material is allowed except for trees, brush, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties for which this site is designated. All burning

must be supervised by a fire department employee. For more information call {PHONE NUMBER OF OWNER OR AUTHORIZED AGENT} .” The placard(s) must be clearly visible and legible at all times;

- (B) designate specific residential properties for consolidated burning at the designated site;
 - (C) maintain a record of the designated residential properties. The record must contain the description of a platted subdivision and/or a list of each property address. The description must be made available to commission or local air pollution control agency staff within 48 hours, if requested;
 - (D) ensure that all waste burned at the designated site consists of trees, brush, grass, leaves, branch trimmings, or other plant growth;
 - (E) ensure that all such waste was generated at specific residential properties for which the site is designated; and
 - (F) ensure that all burning at the designated site is directly supervised by an employee of a fire department who is part of the fire protection personnel, as defined by Texas Government Code, § 419.021, and is acting in the scope of the person’s employment. The fire department employee shall notify the appropriate commission regional office with a telephone or electronic facsimile notice 24 hours in advance of any scheduled supervised burn. The commission shall provide the employee with information on practical alternatives to burning. Commission approval is not required;
- (6) crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of § 111.219 of this title and structures containing sensitive receptors must not be

negatively affected by the burn. When possible, notification of the intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order; and

- (7) brush, trees, and other plant growth causing a detrimental public health and safety condition burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns cannot be conducted at municipal solid waste landfills unless authorized under § 111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of § 111.219 of this title.

30 TAC §111.211 Exception for Prescribed Burn

Outdoor burning shall be authorized for:

- (1) Prescribed burning for forest, range and wildland/wildlife management, and wildfire hazard mitigation purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of § 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.
- (2) Coastal salt-marsh management burning conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris,

Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

- (A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.
- (B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.
- (C) Such burning shall be subject to the requirements of §111.219 of this title.

30 TAC §111.213 Exception for Hydrocarbon Burning

Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills only upon proper notification as set forth in § 101.6 of this title (relating to Notification Requirements for Major Upset), and if the executive director has determined that the burning is necessary to protect the public welfare. Sampling and monitoring may be required to determine and evaluate environmental impacts.

30 TAC §111.215 Executive Director Approval of Otherwise Prohibited Outdoor Burning

If not otherwise authorized by this chapter, outdoor burning may be authorized by written permission from the executive director if there is no practical alternative and if the burning will not cause or contribute to a nuisance, traffic hazard or to a violation of any federal or state primary or secondary ambient air standard. The executive director may specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this rule. Authorization to burn may be revoked by the executive director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

30 TAC §111.219 General Requirements for Allowable Outdoor Burning

Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in any section of this subchapter.

- (1) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.
- (2) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.
- (3) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects

to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

- (4) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.
- (5) Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.
- (6) Burning shall be conducted in compliance with the following meteorological and timing considerations:
 - (A) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.
 - (B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.
 - (C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.
- (7) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic

materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

30 TAC §111.221 Responsibility for Consequences of Outdoor Burning

The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.

Texas Penal Code Penalties

TPC §12.21 Class A Misdemeanor

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000;
 - (2) confinement in jail for a term not to exceed one year; or
 - (3) both such fine and confinement.
-

TPC §12.22 Class B Misdemeanor

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
 - (2) confinement in jail for a term not to exceed 180 days; or
 - (3) both such fine and confinement.
-

TPC §12.23 Class C Misdemeanor

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.

TPC §12.32 First Degree Felony Punishment

- (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.
 - (b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.
-

TPC §12.33 Second Degree Felony Punishment

- (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years.

- (b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

TPC §12.34 Third Degree Felony Punishment

- (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years.
- (b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.

TPC §12.35 State Jail Felony Punishment

- (a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.
- (b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.
- (c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:
- (1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or
 - (2) the individual has previously been finally convicted of any felony:
 - (A) under Section 20A.03 or 21.02 or listed in Article 42A.054(a), Code of Criminal Procedure; or

- (B) for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure.

TPC §12.41 Classification Of Offenses Outside This Code

For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

- (1) “felony of the third degree” if imprisonment in the Texas Department of Criminal Justice or another penitentiary is affixed to the offense as a possible punishment;
- (2) “Class B misdemeanor” if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;
- (3) “Class C misdemeanor” if the offense is punishable by fine only.

TPC §12.51 Authorized Punishments For Corporations And Associations

- (a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.
- (b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:
 - (1) \$20,000 if the offense is a felony of any category;
 - (2) \$10,000 if the offense is a Class A or Class B misdemeanor;
 - (3) \$2,000 if the offense is a Class C misdemeanor; or

- (4) \$50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.
- (c) In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4), if a court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater.
- (d) In addition to any sentence that may be imposed by this section, a corporation or association that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.
- (e) On conviction of a corporation or association, the court shall notify the attorney general of that fact.

Texas Water Code Penalties

TWC §7.187 Penalties ***Amended 2017***

- (a) Except as provided by Subsection (b), a person convicted of an offense under this subchapter is punishable by:
- (1) a fine, as imposed under the section creating the offense, of:
 - (A) not more than \$1,000;
 - (B) not less than \$1,000 or more than \$50,000;
 - (C) not less than \$1,000 or more than \$100,000;
 - (D) not less than \$1,000 or more than \$250,000;
 - (E) not less than \$2,000 or more than \$500,000;
 - (F) not less than \$5,000 or more than \$1,000,000;
 - (G) not less than \$10,000 or more than \$1,500,000; or
 - (H) not more than twice the amount of the required fee;
 - (2) confinement for a period, as imposed by the section creating the offense, not to exceed:
 - (A) 30 days;
 - (B) 90 days;
 - (C) 180 days;
 - (D) one year;
 - (E) two years;
 - (F) five years;
 - (G) 10 years;
 - (H) 15 years;
 - (I) 20 years; or
 - (J) 30 years; or
 - (3) both fine and confinement, as imposed by the section creating the offense.

(b) Notwithstanding Section 7.177(a)(5), conviction for an offense under Section 382.018, Health and Safety Code, is punishable as:

(1) a Class C misdemeanor if the ***violation is a first violation and does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes;***

(2) a Class B misdemeanor if the violation is a second or subsequent violation ***and:***

(A) the violation does not involve the burning of:

(i) substances described by Subdivision (1); or

(ii) insulation on electrical wire or cable, treated lumber, plastics, non-wood construction or demolition materials, furniture, carpet, or items containing natural or synthetic rubber; or

(B) the violation involves the burning of substances described by Paragraph (A)(ii) and none of the prior violations involved the burning of substances described by Subdivision (1) or Paragraph (A)(ii); or

(3) a Class A misdemeanor if the violation:

(A) involves the burning of substances described by Subdivision (1); or

(B) is a second or subsequent violation and involves the burning of substances described by Subdivision (2)(A)(ii) and one or more of the prior violations involved the burning of substances described by Subdivision (1) or (2)(A)(ii).

Heavy-Duty Vehicle Idling

Added 2017

The Locally Enforced Motor Vehicle Idling Limitations rule places time limits on the idling of gasoline and diesel-powered engines of heavy-duty motor vehicles within the jurisdiction of any local government that has signed a Memorandum of Agreement (MOA) with the TCEQ to delegate enforcement of the state's motor vehicle idling limitations to that local government. This rule prohibits any person in the affected local jurisdiction from permitting the primary propulsion engine of a heavy-duty motor vehicle to idle for more than five consecutive minutes when the vehicle is not in motion. [30 TAC § 114]

The municipalities that have signed a MOA with the TCEQ in the Austin- Round Rock area are:

- City of Austin
- City of Georgetown
- Travis County
- Bastrop County

The following cities have implemented idling restrictions through city ordinances:

- City of Austin (MOA and Ordinance)
- City of Bastrop
- City of Elgin
- City of Georgetown (MOA and Ordinance)
- City of Hutto
- City of Lockhart
- City of Round Rock
- City of San Marcos

Glossary of Terms

CAPCOG—Capital Area Council of Governments

HSC—Texas Health and Safety Code

ISW—Industrial solid waste

MSW—Municipal solid waste

Non-Point Source—Non-discrete conveyance (i.e. urban runoff)

Point Source—Discrete conveyance (i.e. end of a pipe)

RETF—Regional Environmental Task Force

TAC—Texas Administrative Code

TCEQ—Texas Commission on Environmental Quality

TC—Texas Transportation Code

TPC—Texas Penal Code

TPWD—Texas Parks and Wildlife Department

TWC—Texas Water Code

Helpful Contacts

CAPCOG and the Regional Environmental Task Force (RETF):

10 county Illegal Dumping Hotline—**1-877-NO-DUMPS** (covers Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson Counties). You can also contact for more info or referrals for assistance: www.capcog.org

The RETF also offers Environmental Law Training (TCOLE, Code Enforcement, Sanitarian and OSSF CEUs) several times a year. Call **512-916-6000** for more information.

Travis County can be a venue for cases statewide under certain sections of the Texas Health and Safety Code and the Texas Water Code.

Travis County Attorney (misdemeanors): **512-854-9513**

Travis County District Attorney (felonies): **512-854-9400**

National Spill Response Center: **1-800-424-8802**

TPWD Kills and Spills: **512-389-4848**

TCEQ Environmental Complaints Hotline: **1-888-777-3186**

TCEQ Smoking Vehicle Reporting Line: **1-800-452-7664**

TCEQ Small Business Assistance:

The Small Business and Local Government Assistance (SBLGA) program provides confidential technical assistance without the threat of enforcement.

1-800-447-2827

TCEQ Spill Reporting: **1-800-832-8224**

About Us

The Regional Environmental Task Force (RETF) produced this guide, which is a multi-jurisdictional law enforcement effort of 12 government agencies in Central Texas. This group formed to address the problems associated with illegal dumping and other environmental crimes. Task Force members assist one another on investigations in Central Texas through an Interlocal Agreement signed in 1996.

The Capital Area Council of Governments (CAPCOG) provides centralized coordination for the Task Force with funding through the Texas Commission on Environmental Quality (TCEQ) from tipping fees charged at municipal solid waste facilities. Members of the RETF also coordinate on investigations with members of the Texas Environmental Enforcement Task Force.

In addition to coordination on case investigations, the RETF provides support for its members in the areas of technical expertise, outreach and education, and training in environmental laws. The coordinator for the Task Force provides a central contact point for complaints via the Illegal Dumping Hotline (**1-877-NO-DUMPS**) which are referred to the appropriate jurisdictions for investigation.

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Help us make this book more useful to you!

We want to provide the best compact environmental laws reference book available. If you frequently use a statute that is not in this book, or if you did not find what you wanted in the index on the first try, let us know. We will use that information to improve the next edition.

Call us at **(512) 916-6000** or leave a comment on our hotline at **1-877-NO-DUMPS**

Thanks,

CAPCOG