

# **A Review of Illegal Dumping in Montgomery and Wharton Counties**

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Prepared for:  
**Montgomery and Wharton Counties and  
the Houston-Galveston Area Council**

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## **Abbreviations and Definitions**

<b>bulky items</b>	couches, chairs, mattress springs, etc.
<b>C&amp;D</b>	construction and demolition debris
<b>Cooperative</b>	Wharton County Electric Cooperative
<b>District #6</b>	Montgomery County Drainage District #6
<b>H-GAC</b>	Houston-Galveston Area Council
<b>project team</b>	Reed-Stowe & Co., Inc. and West Environmental Consulting
<b>T.D.C.</b>	Texas Department of Corrections
<b>TNRCC</b>	Texas Natural Resource Conservation Commission
<b>Tri-County MHMR</b>	Tri-County Mental Health Mental Retardation Services
<b>Type IV Landfill</b>	A site used for the disposal of brush, construction and demolition debris, and/or rubbish free of putrescible wastes.
<b>white goods</b>	household appliances like refrigerators, washing machines, dryers, etc.

## **I. EXECUTIVE SUMMARY**

### **A. Introduction**

Illegal dumping is a problem which has begun to gain increased attention at both the regional and state level in recent years. As Subtitle D regulations came into being, many of the smaller rural and county landfills in Texas have been forced to close due to the cost prohibitive regulations associated with operating a landfill while complying with Subtitle D. The number of landfills operating in the state has decreased from 635 in 1990 to 224 in 1996.<sup>1</sup> For those counties that are primarily rural in nature, and less densely populated, this has made it increasingly more difficult and costly for the residents of these counties to properly dispose of their municipal solid waste. While few, if any, studies have been conducted to quantify to what extent illegal dumping of solid waste is occurring, it is perceived by many within the solid waste industry to be a problem that is on the rise. As a result, both county and municipal governments in Texas are now beginning to develop environmental enforcement programs to address this growing problem.

### **B. Purpose for the Study**

The project team of Reed-Stowe & Co., Inc. and West Environmental Consulting was retained on April 23, 1997 by the Houston-Galveston Area Council (H-GAC) to assist in conducting a pilot study to determine the impact of illegal dumping within the H-GAC region. The original scope of services required the project team to complete the following tasks:

- The project team was to work with H-GAC staff to identify two (2) target areas for the study. (For purposes of this study, Montgomery and Wharton Counties were selected.)
- The project team was to work with H-GAC staff to determine the severity of illegal dumping, current control measures in place, location of the primary illegal disposal sites in the target area, waste stream characterization, and the cost of on-going clean-up.
- The project team was to determine the costs currently being incurred by these counties in dealing with illegal dumping (education, clean-up, enforcement, prosecution, etc.).
- Finally, the project team was requested to develop a series of recommendations for eliminating the problem of illegal dumping.

During our first round of interviews with the county judges, county commissioners and environmental enforcement officers it became apparent that there were a number of organizational issues which needed to be addressed. Examples of such issues include how environmental enforcement officers and county attorneys coordinate their illegal dumping cases, and the level of education provided to the county residents with regard to the nature of illegal dumping and the penalties associated with it. Based on these preliminary findings we broadened the scope of the study to not only address the items described in the initial scope of services, but to include a series of recommendations which addressed a number of organizational, educational, and legal issues associated with both counties' environmental enforcement programs.

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<sup>1</sup> Source: Texas Natural Resource Conservation Commission (TNRCC), "Status Report - Municipal Solid Waste Management in Texas," April 1997, p.16.

This study was funded through a solid waste management grant from the Texas Natural Resource Conservation Commission (TNRCC), and is consistent with H-GAC's goals of reducing the level of illegal dumping within the region, while enforcing the current state laws that address illegal dumping.<sup>2</sup>

### **C. Report Format**

This report is structured such that "Section I. Executive Summary" provides a brief summary of the key issues facing each county with regard to their environmental enforcement program, as well as a series of findings and recommendations which will allow both counties' environmental enforcement programs to continue in their efforts to eliminate the illegal disposal of solid waste in their respective counties. The remainder of the report is structured such that "Section II. Montgomery County" and "Section III. Wharton County" provide in-depth reviews into each county's environmental enforcement program and the various services offered to their residents, in an effort to minimize illegal dumping. "Section IV. Findings And Recommendations" provides a detailed review and explanation of the findings and recommendations which are summarized in the Executive Summary. Appendices A - C provide additional insight with regard to environmental enforcement programs in other parts of the United States; a brief synopsis concerning the status of construction and demolition recycling in Texas; and an overview of Harris County's Environmental Enforcement Division.

### **D. Findings and Recommendations**

#### **Montgomery County**

Montgomery County is located immediately north of the Houston metroplex, and is one of the fastest growing suburban areas in the H-GAC region. It is projected that by the year 2010 Montgomery County's population will reach 325,499, or 90,000 additional residents.<sup>3</sup> The Woodlands, a master planned community, has grown from a population of 8,443 in 1980 to 47,346 in 1996, representing an annual growth rate of 11.4%.<sup>4</sup>

Montgomery County was selected to participate in the illegal dumping study because it has historically been a rural county. However, with the rapid growth realized by the county in recent years, the county has seen an increase in illegal dumping, particularly with regard to construction and demolition materials (C&D).

Montgomery County spends approximately \$390,775 per year dealing with illegal dumping related activities (e.g. clean-up, collection, disposal, enforcement, prosecution). The City of Oak Ridge North and Montgomery County Drainage District #6 spend an additional \$101,626 on illegal dumping related activities. **Collectively, Montgomery County, Oak Ridge North and Montgomery County Drainage District #6 spend \$492,401 per year dealing with illegal dumping.**

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<sup>2</sup> Source: Resource Responsibility, Solid Waste Management Plan for the H-GAC Region, 1992-2012, February 1994, p.61. 1996 Update, November 1996, p.18.

<sup>3</sup> Source: H-GAC Solid Waste Management Plan for the H-GAC Region, 1992-2012, February 1994, p.173.

<sup>4</sup> Source: Interfaith of The Woodlands.

## **Wharton County**

Wharton County is located in the southwestern portion of the H-GAC planning region. Wharton County's population has remained relatively unchanged during the past fifteen years, with a population of 40,990 in 1996. Wharton County is primarily agricultural in nature with the vast majority of the county largely undeveloped.

The primary items found illegally dumped in Wharton County are residential garbage, yard waste, bulky items (couches, chairs, mattress springs, etc.), and white goods (refrigerators, washing machines, etc.). Other materials that can also be found at illegal dumpsites are roofing shingles and C&D materials. **Wharton County spends \$152,276 per year dealing with illegal dumping.**

Wharton County was selected to participate in this study because it is a rural and agricultural county. By contrast, Montgomery County is a rapidly growing county which must deal with illegal dumping issues associated with rapid urban growth. By selecting two uniquely different counties, the project team of Reed-Stowe & Co., Inc. and West Environmental Consulting was able to identify those illegal dumping problems which are similar for both counties, as well as those illegal dumping issues which are county specific. This analysis then allowed the project team to develop a series of recommendations which will help the two counties in managing their illegal dumping problems.

## **Recommendations**

During the course of the study the project team developed a series of findings and recommendations concerning ways in which to reduce the illegal dumping activity in Montgomery and Wharton Counties. Listed below is a summary of the project team's recommendations. An in-depth explanation of the findings and recommendations is provided in "Section IV. Findings and Recommendations" of this report.

Recommendations 1 through 4 are essential in order for Montgomery and Wharton Counties to develop effective environmental enforcement programs that will enable the counties to realize significant decreases in illegal dumping within their respective counties. Recommendations 5 through 10 will benefit Montgomery and Wharton Counties as they modify/develop their environmental enforcement programs.

### **1. Commitment by Key Policymakers to the Program**

For Montgomery and Wharton Counties' environmental enforcement programs to succeed, both programs must receive financial and political support from key policymakers within each respective county.

### **2. Enforcement of Environmental Laws**

Environmental enforcement officers' duties and responsibilities should be focused solely on environmental enforcement related activities (illegal dumping investigations, environmental education, etc.). As part of their responsibilities, the enforcement officers must educate the public as to the laws concerning illegal dumping. The environmental enforcement officers must also coordinate their activities with other law enforcement agencies.

### **3. Educational Programs to Support Enforcement Efforts**

Education is critical to the success of any environmental enforcement program. Therefore, Montgomery and Wharton Counties must be willing to make the commitment to establish educational programs in their respective counties.

**4. Prosecution of Violators**

Montgomery and Wharton Counties must prosecute those guilty of illegal dumping. In order to effectively do that the prosecutors, judges, etc. must be educated with regard to environmental law. Those people that are found guilty of illegal dumping must be fined and the cases publicized. This will discourage others from illegal dumping.

In addition, the project team would recommend the following:

**5. Availability and Convenience of Legal Disposal Options**

Montgomery County should consider the development of a Type IV landfill or transfer station in the county, which would accept construction and demolition materials. In addition, the county should consider the creation of a “disposal bond” or “disposal permit” to be issued at the time a building permit is issued, ensuring that construction debris is properly disposed.

Wharton county should consider the siting of a citizen collection center near the community of Boling. The county should consider a county-wide “amnesty” day, as well as encourage Wharton County Electric Cooperative to expand its existing solid waste services.

**6. Utilize Harris County’s Environmental Enforcement Expertise**

Harris County’s Environmental Enforcement Division, County Attorney and District Attorney’s offices have all agreed to offer their assistance to Montgomery and Wharton Counties. Montgomery and Wharton Counties should take advantage of these resources to the maximum extent possible.

**7. Centralization of Education, Administration and County-wide Clean-ups**

The project team would recommend that both counties consider the centralization of certain environmental enforcement functions which would allow for efficiencies to be realized and avoid the duplication of activities.

**8. Funding of Environmental Enforcement Programs**

At this time, the project team would propose that the funding of environmental enforcement officers be focused at the county level, rather than the municipal level within Montgomery and Wharton Counties. However, as Montgomery County continues to grow, specifically in the southern portion of the county, it will become necessary to develop partnerships between the municipalities and county to deal with environmental enforcement issues.

**9. Monitor “Renegade Recyclers”**

During the course of this study the project team was made aware of a problem within the H-GAC region concerning “renegade recyclers.” This term refers to companies which promote themselves as recycling companies, yet are unable to provide the actual service(s). It is important that environmental enforcement officers monitor these sites to ensure that the operations do not become illegal dumpsites.

**10. Collection of Financial and Operational Data**

Montgomery and Wharton Counties should track their financial costs and operational data associated with environmental enforcement. While both counties are currently tracking some of these items, there is additional data which they should consider compiling.

**11. Environmental Enforcement Program to be Coordinated with Existing Solid Waste Programs in County**

Montgomery and Wharton Counties should coordinate their environmental enforcement programs with the solid waste services currently offered within each county.<sup>5</sup> The environmental enforcement program should work in conjunction with all other solid waste programs so as to avoid duplication of effort, and to ensure that each county is presenting a consistent message to its citizens, with regard to how solid waste is managed within the county.

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<sup>5</sup> This would include solid waste services offered by the county, as well as those offered by municipalities and private operators within the county.

## II. MONTGOMERY COUNTY

### A. Description of County

Located immediately north of the Houston metroplex, Montgomery County's population has grown from 128,487 in 1980 to an estimated 236,192 in 1996, representing an annual growth rate of 3.9%. It is projected that by the year 2010 Montgomery County's population will reach 325,499, or 90,000 additional residents.<sup>6</sup> While Montgomery County has historically been considered a rural county, it is currently one of the fastest growing suburban areas in the H-GAC region. The southern portion of the county, where The Woodlands is located, is where the majority of the growth is occurring.<sup>7</sup> The Woodlands, a master planned community, has grown from a population of 8,443 in 1980 to 47,346 in 1996, representing an annual growth rate of 11.4%. The City of Conroe is the largest incorporated city in the county with a population of 39,387. Approximately 133,037 residents, or 56.3% of the people within Montgomery County live in rural areas.<sup>8</sup>

**Table 1.**  
**Montgomery County Population<sup>9</sup>**

	<b>The Woodlands</b>	<b>Conroe</b>	<b>Rural Residents</b>	<b>Montgomery County</b>
1980	8,443	18,034	86,933	128,487
1990	29,205	27,610	104,397	182,201
1995	36,627	37,761	130,135	230,253
1996	47,346	39,387	133,037	236,192

In addition to the southern portion of the county, which has realized significant residential, commercial and light industrial development, growth is also occurring in the northern portion of the county along the I-45 corridor and Lake Conroe. Much of the rest of the county is rural and agricultural or heavily wooded. The Sam Houston National Forest is located in the northern part of the county; while Lake Conroe, a major recreational area, is located in the northwestern portion of the county. Montgomery County is approximately 1,090 square miles in size.<sup>10</sup>

Montgomery County was selected to participate in this illegal dumping study because it has historically been a rural county. However, with the rapid growth realized by the county in recent

<sup>6</sup> Source: H-GAC Solid Waste Management Plan for the H-GAC Region, 1992-2012, February 1994, p.173.

<sup>7</sup> Population in the south Montgomery County area is projected to be 155,280 by December 2010. Source: The South Montgomery County Population Study, April 1997.

<sup>8</sup> Rural areas, for purposes of this study, are defined as those areas outside the boundaries of all cities, both incorporated as well as unincorporated. The Woodlands are not considered a rural area since it is a planned community.

<sup>9</sup> Sources: H-GAC Regional Data Book, 1982; U.S. Department of Commerce, 1991; Texas State Data Center, 1996; Interfaith of The Woodlands. Table 1. does not list each city in Montgomery County, therefore the columns for The Woodlands, City of Conroe and Rural Residents do not sum to the total Montgomery County population column.

<sup>10</sup> Refer to Map 1 for an overview of the H-GAC region, as well as Map 2 for a map of Montgomery County.

years, the county has seen an increase in illegal dumping, particularly with regard to construction and demolition materials. This issue will be addressed in more detail in the following section.

## **B. Illegal Dumping in Montgomery County**

To ensure a thorough understanding as to the status of illegal dumping in Montgomery County the project team met with numerous county and city officials during the course of this study to gain their input and perspective as to the severity of illegal dumping and the associated costs. As the study progressed, and new information and ideas were developed, the project team oftentimes scheduled follow-up meetings and/or phone interviews with various individuals to discuss these issues.

The project team toured various illegal dumpsites throughout the county with the county's two enforcement officers to gain a better perspective as to what they were dealing with on a daily basis. In addition, the team was shown photographic records of several other locations, some of which had already been subsequently cleaned up. Some of the sites were simply one or two 30-gallon trash bags of waste thrown from a passing car. Other sites consisted of a mixture of debris (residential waste, furniture, etc.) which covered a five to ten square foot area. Finally, there were two major illegal dumpsites which were run by individuals who charged a tipping fee for the waste, despite the fact that they did not have a permit from the TNRCC.

In addition, tours were made of two commercial recycling facilities: Nature's Way and Bulldog Construction. The first is a mulching operation which accepts tree limbs and stumps, untreated lumber, and yard waste for processing on site. It was actively accepting materials and moving finished mulch off site. The location was somewhat crowded with materials waiting to be ground on the 4-5 acres available. The second facility was less active and appeared to have a large accumulation of segregated recyclables and mixed content materials in a dozen or more roll-off containers. There did not appear to be any active movement of materials off-site and the operation could face difficulties if materials continue to accumulate.

## **Observations**

Based on our interviews and tours of the county it became apparent that the issue of illegal dumping is much more of county issue than a municipal one. Every city official we visited said that illegal dumping was not really a problem within the city limits because it was hard for someone to dump illegally without being seen and reported.<sup>11</sup> In addition, city ordinances are in place to discourage dumping and provide for punishments or fines for non-compliance, a governmental option which is not available to the county. Illegal dumping is a problem however in the unincorporated portions of the county which are much less densely populated, and thus easier to dump illegally without being apprehended.

**Precinct One** is in the northern part of Montgomery County and is primarily rural with population density concentrated around Lake Conroe. In touring the area and visiting with the commissioner, we found that most of the materials cleaned up by the county crews are the result of littering rather than the actual illegal dumping of waste.<sup>12</sup> One

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<sup>11</sup> While larger cities like Houston have a very real problem with illegal dumping, smaller cities (i.e. less than 50,000) do not appear to have much of an illegal dumping problem, or at least do not perceive it as a problem. Conroe, the largest city in Montgomery County has a population of 39,387.

<sup>12</sup> For purposes of this study, litter is considered to be those small items (e.g. drink and food containers) which are frequently tossed from a vehicle and found along roadsides. Illegal dumping is defined as the

illegal dumpsite visited in this area was located near the lake and contained primarily construction debris, about 50 cubic yards. Another site, located under a bridge along a relatively isolated county road, was a chronic site for household waste. Typically, resident complaints lead to the identification of sites such as these, whereas the day-to-day collection of waste by county road crews is characterized by isolated dumping of primarily household waste or bulky items. The commissioner identified the need for litter abatement programs to curtail the problem of roadside dumping and litter blown out of the rear of pick-up trucks.

**Precinct Two** is located in the western part of the county and includes rural areas as well as “urban” populations in The Woodlands in the southern part of the county. Most importantly, for the purposes of this study, it includes the Tamina area in the south, where the largest and most active illegal landfills in the county have historically operated. Tamina is an economically disadvantaged minority community and illegal dumping activities have provided income for some of its residents while adversely affecting the quality of life for the community as a whole. Several sites have been the focus of long-standing investigations by the local TNRCC enforcement office. Illegal landfill operators have been prosecuted, fined, even jailed, and the sites cleaned up only to reopen under the demand for convenient affordable dumping for construction debris in this rapidly growing part of the county. The precinct commissioner is aware of the situation and has been actively working to get the sites permanently closed. In the interview with the project team, he identified the need for increased monitoring of illegal sites, continued enforcement, and successful prosecution to help end the problem. In an on-going effort to address the situation, the commissioners and other county officials met with the State Attorney General’s office and the TNRCC’s state staff shortly after the project team’s interview. While the problem of chronic, large-scale dumping of construction and demolition debris is the overriding illegal waste problem in the precinct, the rural areas of the precinct experience problems with illegally disposed household waste similar to other rural parts of the county.

**Precinct Three** is located in the southern part of Montgomery County and is the most “urban” precinct in population density, including most of the currently developed sections of The Woodlands as well as several other unincorporated subdivisions and the City of Oak Ridge North. While the precinct is experiencing rapid growth which generates large volumes of construction debris and attendant problems, illegal dumping of household waste is relatively slight. Most of the subdivisions in the precinct have waste collection services provided by homeowner associations or municipal utility districts and the precinct provides drop-off containers for bulky items, yard waste, white goods, and do-it-yourself construction at the precinct barn. Some illegal C&D dumpsites have been located in creek areas abandoned after recent floods, as well as along the drainage ditches now patrolled by law enforcement officers from the City of Oak Ridge North. However, the availability of large illegal sites in Precinct Two combined with the relative population density of Precinct Three seems to encourage the exporting of waste outside the precinct. In fact, investigations of the Tamina area illegal dumpsites have produced evidence of building materials coming from Precinct Three.

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disposal of larger items where oftentimes an individual stops his vehicle in a remote area to unload garbage bags, old furniture, appliances, construction debris, etc.

**Precinct Four** is located in the eastern portion of the county and is primarily rural in nature. Illegal dumping in this precinct consists of primarily residential household waste. The environmental enforcement officer attached to the precinct identified a pattern of illegal dumping which suggests that most offenders dump their household trash three to four miles from their home. Dead end roads are subject to dumping as are certain through roads in relatively isolated areas which become “favorite” dumping places. While construction and demolition debris is less often involved, its volumes are greater. This is true for the county as a whole and typical of the C&D problem. For example, the precinct’s environmental enforcement officer, who serves the entire county, indicated that he and the other investigator estimate that while the number of C&D sites are only one-third of the total number of sites, they account for 70% of the total volume of illegally disposed waste.

### **Construction Debris**

During the project team’s examination of illegal dumping in Montgomery County we discovered that residential garbage, bulky items (couches, chairs, mattress springs, etc.), white goods, yard waste and construction debris were found at various illegal dumpsites throughout the county. However, the greatest concern is with regard to the large amount of construction debris which is currently being disposed of illegally. Montgomery County has several major illegal dumpsites which have been, and may still be accepting construction debris.<sup>13</sup>

The high incidence of illegal dumping is caused by the large amount of new development occurring in Montgomery County, coupled with the fact that the county has only one Subtitle D landfill, Security Landfill (Waste Management, Inc.), which is approximately a 1 to 1.5 hour round-trip from The Woodlands.<sup>14</sup> As a result, homebuilders seeking to dispose of construction debris do not have convenient access to a legal site at which to dump their construction debris. By comparison, illegal dumpsites in the Tamina area just east of I-45 are approximately ten minutes from The Woodlands. In conversations with environmental enforcement officers and other city and county officials, it appears that the homebuilders oftentimes contract with a small operator to dispose of the construction debris. In many cases the contractor collecting the waste is a one or two man operation.

### **C. Existing Programs to Minimize/Eliminate Illegal Dumping**

The following section of this report will provide a brief overview of the services provided by Montgomery County in dealing with illegal dumping.

**Precinct One’s** primary expenditures are related to funding clean-ups of the county roads and right-of-ways. As mentioned in the preceding section, the majority of these expenditures are incurred for litter collection rather than the clean-up of illegal dumping locations. One full-time county employee and associated equipment are funded by the precinct to conduct the clean-up operations. Unpaid labor from the local Gulf Coast

<sup>13</sup> These sites are the Walter Jackson site and Isiah Thomas site (both in the Tamina area), and a site located in the former Conroe oil fields.

<sup>14</sup> Number of building permits in Montgomery County, per the County Engineer.

	commercial	residential
1994	136	2,394
1995	141	2,854
1996	194	3,872
1997	(estimated to equal or slightly exceed 1996)	

Trade Center youth detention center are used to perform the clean-up. Precinct One also spends a portion of its funds in the posting of “no dumping” signs within the precinct. Finally, along with all other precincts in the county, it participates in the annual county-wide clean-up day when county residents can drop off bulky items, white goods, do-it-yourself debris, and other trash at containers located throughout the county. The event has recently been reduced from a multi-day, multi-weekend event to keep costs down. The local landfill provides one day of free disposal to support the event.

**Precinct Two** expends the majority of its funds in the clean-up of illegal dumpsites and littering on roads and right-of-ways. In addition to funding county personnel and equipment to perform the clean-ups, the precinct has contracted with the non-profit Tri-County Mental Health Mental Retardation Services (Tri-County MHMR) to assist in litter collection.<sup>15</sup> Personnel, equipment and materials are also used in the posting and repair of “no dumping” signs. Precinct Two also includes 20% of an enforcement officer who serves as the precinct’s environmental enforcement officer on a part-time basis and assists the full-time enforcement officer from Precinct Four. The commissioner mentioned that the enforcement officers have been able to eliminate approximately six illegal dumpsites within the precinct. Finally, the precinct participates in the annual county-wide clean-up day.

**Precinct Three** offers a variety of services in order to reduce illegal dumping within the precinct. A 30 cubic yard roll-off is kept at the precinct barn and is made available to the residents of this precinct year-round to dispose of their white goods, do-it-yourself construction debris, tree limbs and brush. The residents are not assessed a fee when they drop-off items for disposal. The roll-off is available on a 24-hour basis and is supervised during work hours but unmanned when the precinct barn is closed. Contamination of the roll-off (household hazardous waste, used oil, etc.) is estimated at less than 5%. The commissioner estimates that since these containers were first made available to the residents, four years ago, the level of illegal dumping within the precinct has decreased 70-75%. An 8 cubic yard container near the adjacent ballpark is also made available to the precinct’s residents. He mentioned that the private collectors within the precinct have not complained about the county government “competing” with the private operators for the collection of solid waste. In addition to the county workers, who spend a portion of their time cleaning up illegal dumping on county roads and right-of-ways, the precinct contracts with Tri-County MHMR Services to pick-up litter along county roads.

**Precinct Four** has become more active in addressing solid waste issues in the past year. In December 1996 the precinct was awarded a grant to hire an environmental enforcement officer to assist in reducing illegal dumping within the precinct, as well as county-wide. The commissioner believes that the precinct will in all likelihood assume the costs associated with the environmental enforcement officer once the grant funds are fully expended. The precinct also received a grant for the construction of a recycling facility which opened approximately four months ago.<sup>16</sup> The precinct also provides for

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<sup>15</sup> Precincts 2, 3 and 4 have all contract with Tri-County MHMR for litter collection. However, these services will no longer be available and alternative methods will have to be found which may be more expensive. Precinct 4 has already switched to prison labor, see above.

<sup>16</sup> The capital and operating costs associated with the recycling facility are not included as a cost in determining the cost of illegal dumping, because it is not a fully integrated solid waste facility which would

the clean-up of illegally dumped items in the county roads and right-of-ways. The precinct has begun to use Texas Department of Corrections (T.D.C.) inmates to provide litter control services within the precinct. The only funding required of the precinct for litter control is meals for the inmates and the use of a 1993 van and 14' trailer. The precinct also spends a portion of its funds on the posting of "no dumping" signs. Finally, the precinct is assisting with the funding of an Adopt-A-County Mile Program to assist in the maintaining of the county roads and right-of-ways. In visiting with the commissioner, he has found that by keeping the right-of-ways mowed and drainage ditches cleared that it appears to help in discouraging illegal dumping. Since many of these programs started, he feels that illegal dumping and littering within the precinct has shown a steady decrease.

In addition to the precinct budgets, the County's Environmental Health Division funds the salaries, benefits, and materials required for their inspectors who spend a portion of their time dealing with illegal dumping related issues. The County Attorney's Office is also funded for their activities with regard to the prosecution of environmental cases.

#### **D. Annual Cost of Programs**

Schedule 2, provides a summary of the total costs incurred by all four precincts, the County Environmental Health Division and the County Attorney's Office, in dealing with illegal dumping in Montgomery County. Schedules 3 through 6 provide a detailed description and breakdown of the costs by precinct. **Illegal dumping costs Montgomery County, on an annual basis, an estimated \$390,775.**

Schedule 7 lists the illegal dumping related expenditures incurred by other governmental entities within Montgomery County. While most cities said they did not expend any money dealing with illegal dumping, the City of Oak Ridge North estimated they spend \$2,500 per year with regard to clean-ups and enforcement activities. Montgomery County Drainage District #6 estimated their annual expenditure at \$99,126. District #6 said they incurred a significant cost, \$53,026 per year cleaning out debris that has been illegally dumped in drainage ditches.

**If added together, Montgomery County, the City of Oak Ridge North, and Montgomery County Drainage District #6 spend an estimated \$492,401 per year dealing with illegal dumping.**

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also take municipal solid waste on a full time basis. At present, it will take one or two 30 gallon bags of garbage from a resident if they are also dropping off materials at the recycling facility.

### III. WHARTON COUNTY

#### A. Description of County

Wharton County is located in the southwestern portion of the H-GAC planning region. Wharton County's population has remained relatively unchanged during the past fifteen years. The county's population was 40,242 in 1980 and had grown to 40,990 by 1996. The only incorporated cities in the county are El Campo (10,798) and Wharton (10,066). As of 1996, approximately 42.2% of the county's residents reside in rural areas.<sup>17</sup>

**Table 2.**  
**Wharton County Population<sup>18</sup>**

	<b>Wharton</b>	<b>El Campo</b>	<b>Rural Residents</b>	<b>Wharton County</b>
1980	9,033	10,462	17,664	40,242
1990	9,011	10,511	17,770	39,955
1995	9,855	10,788	17,617	41,103
1996	10,066	10,798	17,307	40,990

Wharton County is primarily agricultural in nature with the vast majority of the county largely undeveloped. Wharton County is one of the leading rice-producing counties within the state. Wharton County is approximately 1,076 square miles.<sup>19</sup>

Wharton County was selected to participate in this study because it is a rural and agricultural county. By contrast, Montgomery County is a rapidly growing county which must deal with the illegal dumping issues associated with rapid urban growth. By selecting two uniquely different counties, the project team was able to identify those illegal dumping problems which are similar for both counties, as well as those illegal dumping issues which are county specific. This analysis then allowed the project team to develop a series of recommendations which will help the two counties in managing their illegal dumping problems.

#### B. Illegal Dumping in Wharton County

The project team's approach to examining the issue of illegal dumping within Wharton County was similar to the process used in Montgomery County. The project team members met with county and city officials to gain their perspective, and then toured a number of illegal dumpsites (in- person, video, photographic, etc.).

With the exception of the cities of El Campo and Wharton, the county is primarily rural and agricultural in nature. In visiting with the commissioners from each precinct, the primary items found illegally dumped in the county roads and right-of-ways are residential garbage, yard waste,

<sup>17</sup> Rural areas, for purposes of this study, are defined as those areas outside the boundaries of all cities, both incorporated as well as unincorporated. Table 2 does not list each city in Wharton County, therefore the columns for the Cities of El Campo and Wharton, and Rural Residents do not sum to the total Wharton County population.

<sup>18</sup> Source: H-GAC Regional Data Book, 1982; U.S. Department of Commerce, 1991; Texas State Data Center, 1996.

<sup>19</sup> Refer to Map 3 for a map of Wharton County.

bulky items (couches, chairs, mattress springs, etc.) and white goods. Other materials that can also be found at illegal dumpsites are roofing shingles and C&D materials.<sup>20</sup> The enforcement officer and one commissioner also mentioned junked vehicles as a problem and one that needs to be addressed.

### **C. Existing Programs to Minimize/Eliminate Illegal Dumping**

With the exception of Precinct Two, the other three precincts' expenditures with regard to illegal dumping are related to primarily cleaning up materials that are illegally dumped in the county roads and right-of-ways. However, Precinct Three does accept brush and limbs at certain times of the year,<sup>21</sup> and it also provides recycling bins in Louise to collect newspaper, plastic, and used oil.

Precinct Two focuses primarily on county roads and right-of-ways when cleaning up illegal dumpsites, as well as on any new illegal dumpsites located on private property. When the illegal dumpsites are on private property the precinct will typically send a letter to the owner of the property telling them to clean up the property based on the Public Health Nuisance Act (Chapter 341, Health and Safety Code). However, the precinct has limited success with this tactic since in many cases if the county were to file a lien against the property it would end up costing the county more money to clean-up the site than the property is oftentimes worth.

Precinct Two has been operating a citizen collection center since 1991. The citizen collection center is located on the outskirts of East Bernard. Items accepted at the collection center include: municipal solid waste, C&D materials, used oil, used tires, white goods/bulky items, and brush. Precinct Two is the only precinct to collect bulky items. In fact, Precinct Two is currently accepting bulky items from two other counties as well. All users of the collection center are charged a fee depending on the items being disposed. Precinct Two also operates a recycling facility which takes newspaper, office paper, aluminum, cardboard, HDPE and PET.<sup>22</sup>

In visiting with the commissioner of Precinct Two he said that the creation of a citizen collection center has definitely reduced illegal dumping in his precinct. For citizens in other parts of the county, there are municipal transfer stations located in the cities of El Campo and Wharton, both of which are open to county residents for a charge.

Wharton County was awarded a grant in October 1996 to fund the salary, benefits, equipment and vehicle for one environmental enforcement officer. The officer is staffed out of the sheriff's department. It is projected at this time that once the grant funds are expended the county will pick up the cost of this position in the county budget.

### **D. Annual Cost of Programs**

Schedule 8 provides a summary of the total costs incurred by all four precincts in dealing with illegal dumping. Schedules 9 through 12 provide a detailed description and breakdown of the costs by precinct. **Illegal dumping costs Wharton County an estimated \$152,276 per year.**

### **Comparison of Wharton County and Montgomery County Expenditures**

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<sup>20</sup> Wharton County has some problems with the illegal dumping of C&D, but not to extent of Montgomery County.

<sup>21</sup> Presently collecting during the month of October.

<sup>22</sup> Costs associated with the recycling facility are not included for purposes of this study.

Schedule 1 provides a comparison of the annual illegal dumping related expenditures for Montgomery County and Wharton County. While it is difficult to compare expenditures between two counties which are very different with regard to population, growth, etc., there are some basic comments that can be made. They are as follows:

- Based on interviews with both counties, neither Montgomery or Wharton Counties expend any funds on education with regard to illegal dumping.<sup>23</sup> If the counties want to reduce the amount of illegal dumping currently taking place within their counties, they must be willing to spend the money to educate their residents about illegal dumping (e.g. health risks, public safety, penalties). Education is a critical component in all successful environmental enforcement programs.
- If both counties decide to begin prosecuting people guilty of illegal dumping, then they must be willing to recognize that prosecution related costs will increase, as county and district attorneys spend more time on environmental cases.<sup>24</sup> However, if perpetrators are required, or volunteer, to clean up their illegal dumpsites, the counties can avoid spending their funds on clean-up which can save the counties money.<sup>25</sup>
- While Montgomery County is spending more money than Wharton County on every type of illegal dumping related activity (clean-up/collection, enforcement, disposal, prosecution), it should be noted that on a per capita basis, Wharton County is spending considerably more than Montgomery County (Wharton County - \$3.72 per capita, per year; Montgomery County \$2.08 per capita, per year).

These numbers highlight an issue that many rural counties must address: Rural counties (i.e. Wharton County) must spend more on a per capita basis than their urban counterparts (i.e. Montgomery County) in order to provide even a “minimal” level of service with regard to environmental enforcement.

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<sup>23</sup> While the counties may spend some nominal amount of money on education, it is insignificant enough that it could not be documented.

<sup>24</sup> This may not represent a “true” increase in costs for the county. For instance if the county is able to use its existing staff to prosecute these cases, the county has not incurred any additional costs, it would merely recognize that a larger portion of its existing county budget is being used to combat illegal dumping.

<sup>25</sup> Avoided clean-up costs can be substantial. The City of Houston’s illegal dumping program “Rat on a Rat,” is estimated to have saved the city over \$1 million in clean-up costs since the program’s inception in 1993.

#### IV. FINDINGS AND RECOMMENDATIONS

This section will provide a series of findings and recommendations which the project team developed based upon information reviewed, and interviews conducted during the course of this study.<sup>26</sup> While all of the recommendations will assist Montgomery and Wharton Counties in the development of a highly effective environmental enforcement program, the first four recommendations are absolutely essential if the counties are to have successful programs.<sup>27</sup>

The first four recommendations are as follows:

1. **Commitment by key policymakers to the program**
2. **Enforcement of environmental laws**
3. **Educational programs to support enforcement efforts**
4. **Prosecution of violators**

A detailed description of the first four recommendations is provided below. Following those recommendations are a series of additional recommendations that will benefit Montgomery and Wharton Counties as they modify/develop their environmental enforcement programs.

##### 1. Commitment by Key Policymakers to the Program

###### **Findings:**

For Montgomery and Wharton Counties' environmental enforcement programs to succeed, both programs must receive financial and political support from key policymakers within each respective county. This support is essential in order for the enforcement officers and prosecutors to be able to successfully undertake and complete their assigned duties.

Harris County has a very successful environmental enforcement program. The program's success is due in a large part to the realization by one of the county commissioners that there was a critical need for a program that would pursue those parties guilty of illegal dumping. Through the commissioner's persistence, he was able to obtain the necessary political and financial backing from the commissioners court and key individuals within Harris County in order to create the Harris County Environmental Enforcement Division.

###### **Recommendations:**

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<sup>26</sup> Refer to Attachments 13 and 14 for a listing of individuals interviewed and documents reviewed during the course of this study.

<sup>27</sup> A recommendation may actually include a series of "sub-recommendations" which need to be implemented. For instance, "Recommendation 4. Prosecution of Violators" lists a series of sub-recommendations which the counties should consider implementing.

**Use environmental enforcement experts from region to better inform commissioners courts in both counties about the importance of environmental enforcement.**

This task can be accomplished in a number of ways, including a special briefing or presentation made to members of the court. Among the aspects to be covered are the nature and extent of illegal dumping, options for enforcement, and the importance of providing a deterrent program. Enforcement officers should be used to assist in providing materials and background for the presentation including photographs and videos of illegal dumping sites or activities. Maps of the locations of the dumpsites should be developed. By allowing the commissioners to “buy-in” to the importance of an environmental enforcement program, the counties will have the backing essential to support the environmental enforcement officers and prosecutors in the conduct of their jobs.

In addition to obtaining “buy-in” from the commissioners, it is important that other key decision makers such as law enforcement management (county sheriffs, etc.) and other officials in a position to have decision-making authority over the environmental enforcement program are educated with regard to the program, and committed to its success.

Outside resources to contact for participation/assistance in presentation include Harris County Precinct Three Environmental Enforcement Division, Harris County Pollution Control Department, Harris County attorneys Ms. Cathy Sisk or Mr. Roger Haseman, and H-GAC.

## **2. Enforcement of Environmental Laws**

### **Findings:**

The environmental enforcement officer is typically the most visible individual within an environmental enforcement program. In the early stages of the development of a new program, it is not uncommon for the officer(s) to spend the majority of their time educating the general public and key county officials about illegal dumping (health risks, fines, etc.). The Harris County environmental enforcement program was created in May, 1993. The senior environmental enforcement officer in Harris County’s program spent the majority of his time that first year educating people about the program, from business and community leaders to school children. The environmental enforcement officer will also oftentimes help educate other law enforcement officers (constables, sheriff’s deputies) to enhance cooperation between enforcement entities.

Because Harris County’s program is now four years old, many people are familiar with the program and call in with complaints about illegal dumping. While the majority of the officers’ time is now spent on investigation, education remains an important and ongoing effort.

### **Recommendations:**

#### **i. Environmental enforcement officers should focus on environmental crimes**

The environmental enforcement officers in each county should be used to solely investigate environmental offenses (illegal dumping of solid waste, C&D, hazardous wastes, etc.). These officers should not be utilized to conduct code enforcement inspections which are handled by the county health departments.

**ii. Officers must educate general public, etc.**

The environmental enforcement officers must be active in educating the general public as to the law concerning illegal dumping. Presentations at schools, civic groups, etc. are ideal for accomplishing this task.

**iii. Montgomery County to fund a second officer**

We propose that the county consider hiring a second environmental enforcement officer. At present, the county has the equivalent of approximately 1.2 FTE's, with regard to environmental enforcement officers. Due to the magnitude of illegal dumping, specifically construction debris, a second officer would be helpful in conducting more investigations. The second officer would also increase the amount of time available for staking out chronic illegal dumpsites, in an attempt to arrest the responsible individuals.

**iv. Wharton County to continue to fund the current officer position**

The Wharton County environmental enforcement officer's position is currently funded with a grant from H-GAC. The project team would strongly recommend that the county continue to fund the position with county funds once the grant funds are expended. The environmental enforcement officer's position is critical if the county is to retain an environmental enforcement program.

(With regard to recommendations iii. and iv., if either county is unable to assign staff full-time to environmental enforcement, the county should still establish an environmental enforcement program to utilize existing staff resources to address illegal dumping problems to the extent possible.)

**v. Train other law enforcement officers**

The environmental enforcement officers in both counties need to train the other law enforcement officers in their county (constables, sheriff's department), and establish procedures for their involvement in the environmental enforcement efforts, especially in the initial identification of illegal dumping activities and the referral of these cases to the assigned environmental enforcement officer. Harris County's environmental enforcement officers found that by giving a brief presentation at roll call they could educate other law enforcement officers as to things to look for when they are on patrol, with regard to illegal dumping and other environmental crimes.

### **3. Educational Programs to Support Enforcement Efforts**

Education is crucial to the success of any environmental enforcement program. It is essential that the citizens be educated with regard to the fines and penalties associated with illegal dumping. In addition, it is important that citizens be made aware of the health and safety issues associated with illegal dumping, as well as where they can go to properly dispose of their waste within the county.

One of the major reasons for education is that citizen complaints are the source of most illegal dumping reports. Citizen cooperation is promoted by getting good, reliable information to the public about how they can participate. Just as important, however, is educating local leadership and key personnel about program goals and purposes. Not surprisingly, Harris County Precinct Three, which we have included in this report as an example of a successful environmental enforcement program, also has an excellent educational component. It includes a schools program, brochure, stand-up display, videotape, slide presentation, and 100 public presentations per year to children and adult groups. The following recommendations are intended to assist Montgomery and Wharton Counties develop effective educational programs.

### **Findings:**

In reviewing the budgets for Montgomery and Wharton Counties we found no funds allocated specifically to education. Interviews with county officials and enforcement personnel indicated some interest in providing educational materials, but no formal programs in place. Both counties were in their initial year and both were grant-funded through H-GAC to provide for start-up personnel and equipment costs. While education is not an integral part of the environmental enforcement programs yet, the enforcement officers in both counties are cooperating with the local media on press-generated stories concerning the enforcement program.

### **Recommendations:**

#### **Montgomery and Wharton Counties need to establish educational programs.**

Without educational programming, the efforts made to date in developing environment enforcement will not become self-sustaining and will lose both momentum and effectiveness. Education needs to be considered as an on-going process, it should continue as long as the enforcement program is in place.

The process of developing an educational program involves several steps, including the following:

#### **a. Define Target Audiences**

In both counties, audiences targeted for education efforts should include, at a minimum:

- public officials
- law enforcement personnel and leadership
- county prosecutors and judges
- general public

#### **b. Develop Methods to Reach Audiences**

Varying methods should be used to reach different audiences. For example, in educating public officials, a preferred method would be through meetings or special briefings. Presentations to these decision makers might include data gathered on illegal dumping in the county, photographs of typical sites, maps indicating the locations of illegal dumping sites, brief reports on the status of sites -- cleaned-up or existing sites, and budgetary information. Public officials are often the first and most important audience for educational messages. Environmental enforcement officers in Harris County Precinct Three spent their first year educating elected officials, including commissioners court,

Justices of the Peace, as well as law enforcement and local prosecutors. Law enforcement officers were also educated through county-held workshops on environmental enforcement. Prosecutors and judges can also benefit from workshops which address environmental law as an emerging legal issue in Texas.

Basic methods for reaching the general public include: press releases, speakers bureau, and informal presentations. Releases need to be produced regularly and distributed to a wide variety of outlets to reach the broadest public. Speakers bureaus involve scheduling environmental officers to speak at local service clubs, church groups, community meetings, and schools. Informal presentations may mean setting up a table outside a local grocery store or library or at special community events like the county fair.

#### **c. Develop a Budget for Education**

During the yearly budget process counties should develop a budget for education to be included within the environmental enforcement budget. Additional funds should be sought through grant opportunities. In-house personnel should be utilized as much as possible to perform education functions. For example, receptionists can be trained to assist with citizen hotline calls about illegal dumping, or county personnel involved in media relations can be used to help publicize the environmental enforcement program. It is important to budget some resources, especially for support materials.

#### **d. Produce Supporting Materials**

Enforcement officers can effectively carry the message directly to the various targets audiences, however, supporting materials can be invaluable in reaching wider audiences through indirect means.<sup>28</sup> Among the recommended supporting materials are:

- Citizen Hotline  
Citizens need an easy method to report illegal dumping. Counties may designate their main number as long as its is equipped with an answering machine and illegal dumping message for after hours calls. Personnel who answer the line must be trained to field the calls. Include hotline numbers on all educational materials and other county publications intended for public distribution.
- Informational brochure or guide  
Guides can be produced for various audiences. Harris County Precinct Three has a general information guide to environmental law for use with public officials, businesses, and enforcement officers. It also has an easy-to-read flyer designed for use with the general public and school groups. Production was paid for by a grant. The public program is called STOP, which stands for Stop Trashing Our Precinct, and is a good model for other counties.
- Display  
Displays can be used by enforcement officers to accompany presentations or as a stand-alone informational tool which can be set up in controlled locations like libraries. Displays may include photos of local illegal dumpsites and spotlight the activities of the environmental enforcement program.

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<sup>28</sup> The project team can provide sample copies of brochures developed by Harris County, Cameron County, and Palm Beach County (Florida), if requested.

- Videotape

A short, informational videotape can be an excellent way to get out the message about environmental enforcement. Multiple copies can be made and distributed to county leadership, schools, and interested organizations. Harris County Precinct Three developed an excellent videotape using grant funds, for a very nominal cost.

#### **4. Prosecution of Violators**

The following recommendations are provided to assist the county and district attorneys with their prosecution of “environmental law” related cases. Implementation of these recommendations will help each county in its prosecution of environmental related crimes and assist in reducing the amount of illegal dumping within Montgomery and Wharton Counties.

##### **A. Prosecutors need to be educated regarding environmental law**

###### **Findings:**

In our meetings with both environmental officers and prosecutors we found that many prosecutors are unfamiliar with environmental law and how to prosecute people who have been arrested for illegal dumping. One prosecutor said that she would like to prosecute these cases, but that she was unfamiliar with the law, and due to her backlog it made it nearly impossible for her to do the necessary legal research in order to prepare an illegal dumping case for trial. Environmental enforcement officers said they find it frustrating when they arrest someone for illegal dumping, and then have the case dismissed, due to the low priority given these types of cases, or because the prosecutor is unfamiliar with the law as it pertains to illegal dumping.

Harris County has a very active environmental enforcement program. During the course of this study the project team met with environmental officers in the Harris County Environmental Enforcement Division, staff from the Harris County Pollution Control Department, as well as with Ms. Cathy Sisk, Assistant County Attorney, Harris County; and Mr. Roger Haseman, Assistant District Attorney, Harris County. Both attorneys deal solely with the prosecution of environmental crimes. They both agreed that one of the biggest challenges for county prosecutors unfamiliar with environmental law was finding the time to do the legal research. They said if sample copies of pleadings, motions, etc. from prior environmental cases, were made available to the prosecutors, those documents would be of great benefit in helping them to prosecute environmental crimes.

###### **Recommendations:**

###### **i. Provide copies of sample pleadings**

The project team would recommend that sample copies of pleadings be provided to prosecutors in Montgomery and Wharton Counties who are involved in the prosecution of environmental cases. We have enclosed some sample copies of pleadings as Attachments 1 through 9.

###### **ii. Provide environmental law training sessions**

The project team would recommend that H-GAC continue to offer training sessions for prosecutors (county attorneys, district attorneys) that would provide them with an understanding as to how to prosecute illegal dumping cases, as well as other environmental crimes. These sessions would also explain why there is a need for enforcement of these laws. In many cases, the legal staff and judiciary are not only not familiar with the laws, but are not familiar with why enforcement is important. In addition, prior cases (filings, etc.) could be provided to the attendees so they would have a series of environmental cases for future reference.<sup>29</sup>

**iii. Take advantage of prosecutors knowledgeable in environmental law**

We would recommend that both Montgomery and Wharton Counties utilize Ms. Sisk and Mr. Haseman's expertise with regard to environmental law. Both individuals offered to help answer any questions that either county may have with regard to the prosecution of environmental cases. Their phone numbers are:

- Ms. Cathy Sisk, Assistant County Attorney, Harris County (713) 755-8282
- Mr. Roger Haseman, Assistant District Attorney, Harris County (713) 755-7889

**iv. Have a county prosecutor(s) specialized in environmental law**

Due to the fact that many county prosecutors are not familiar with environmental law, we would propose that both counties consider having one prosecutor or a team of prosecutors (two or three) designated as the prosecutors responsible for handling environmental cases. Once they have received the proper training (see recommendations i. - iii.), they would be capable of handling the environmental cases within their respective county. Depending on the number of cases, it may be determined that only one attorney needs to be trained in environmental law. The county may also decide that having a team of attorneys familiar with environmental law is more time effective.

**v. Judges need to be educated regarding environmental law**

It is important that the judges hearing the environmental cases be educated as well. One prosecutor mentioned during his interview with the project team that he had to educate some of the judges he presents his environmental cases before, due to their unfamiliarity with environmental law. The prosecutor mentioned that when he brings an environmental case before one particular judge, that he helped "educate," the judge is now familiar with environmental law and is known for being "tough" on those people guilty of environmental crimes. The importance of educating the judges cannot be underestimated. In recent years a municipal judge in Dallas dismissed hundreds of dumping-related citations because he said they should have been filed in state court.<sup>30</sup>

**B. People caught illegally dumping must be prosecuted**

**Findings:**

At present, when someone is caught illegally dumping they are typically given a warning and told to clean up the dumpsite, required to do some type of community service, and/or fined a certain dollar amount as allowed by state law. However, it appears that in many

<sup>29</sup> Training courses concerning environmental law have also been developed by Texoma Council of Governments, and may be of benefit.

<sup>30</sup> Dallas Morning News, Monday August 11, 1997, Attachment 10.

cases the warnings, community service and fines are not serving as a severe enough deterrent to further dumping. It can simply become the cost of doing business to chronic offenders.

### **Recommendations:**

#### **Fine people convicted of illegal dumping.**

The project team would recommend that both counties consider fining people convicted of illegal dumping the maximum amount allowed by law (see recommendation C. below). Enforcement officers and prosecutors interviewed by the project team all agreed that in order to reduce the amount of illegal dumping taking place within Montgomery and Wharton Counties, the illegal dumpers need to be fined and the cases publicized. By publicizing the cases people will realize that Montgomery and Wharton Counties are serious about fining people that are caught illegally dumping within each of their respective counties.

At present, Montgomery County has homebuilders that appear to be having their scrap construction materials illegally dumped (oftentimes by an individual contractor). Until these builders and/or haulers are fined, or have their vehicles confiscated (as allowed by state law), they will continue to illegally dump the scrap construction materials. In interviews with Palm Beach County, Florida and Dade County, Florida officials they said that without strict enforcement and fining of illegal dumpers the illegal dumping activity will only continue.<sup>31</sup>

### **C. Prosecution in a civil vs. criminal venue**

#### **Findings:**

In our interviews with environmental enforcement officers and prosecutors (county and district attorneys) we found that people cited for illegal dumping are typically prosecuted under the terms of either the Solid Waste Disposal Act (Chapter 361, Health and Safety Code) or the Texas Litter Abatement Act (Chapter 365, Health and Safety Code). In most cases, when an individual is caught illegally disposing of materials (e.g. dumping a quarter-ton load of construction debris in a deserted lot, or dumping an old sofa in a creek bed) the case is typically tried as a criminal offense where the fines are as follows:

**Class C Misdemeanor** -Solid waste or litter which weighs 15 pound or less.  
Penalty: \$500 fine

**Class B Misdemeanor** -Solid waste or litter which weighs more than 15 pounds but less than 500 pounds.  
Penalty: 180 days in jail and/or \$2,000 fine

**Class A Misdemeanor** -Solid waste or litter which weighs more than 500 pounds.  
Penalty: 1 year in jail and/or \$4,000 fine

**Repeat Offenders** -On a subsequent conviction of the offense:

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<sup>31</sup> For more information on these Florida counties, refer to Appendix A of this report.

- the punishment is increased to the punishment of the next highest category; and
- the vehicle used by the violator may be forfeited.

For those cases where there is a large illegal dumpsite that is a chronic problem it may make sense to prosecute those cases in a civil venue, since the fines can be larger than those described above, and the prosecutor is able to obtain a court ordered injunction with regard to the illegal dumping activity. For example, the project team was told by a prosecutor that in a hypothetical case of a homebuilder that was hauling construction scrap to an illegal dumpsite, she would probably prosecute that case in a civil venue so she could obtain a court ordered injunction to close down the illegal dumpsite and then seek restitution from the homebuilder to assist in the monetary costs associated with cleaning up the illegal dumpsite. Staff at the Harris County Pollution Control Department said that corporations caught illegally dumping materials would rather be prosecuted in a civil venue, even though the fines can be higher, so as to avoid the corporation having a criminal record.

### **Recommendations:**

#### **Prosecute in the venue which will provide the strongest deterrent to future illegal dumping.**

We would recommend that Montgomery and Wharton Counties prosecute the cases under whichever venue will be the most effective in acting as a deterrent to future illegal dumping by the individual charged. To the extent that these cases are publicized, the publicity will let other potential illegal dumpers know that the county is serious about prosecuting those individuals that are illegally dumping within the county.

### **ADDITIONAL RECOMMENDATIONS:**

In addition to the above four recommendations, which are essential to the success of environmental enforcement programs, there are a number of additional recommendations which the counties should consider implementing in order to ensure that their environmental enforcement programs are as effective as possible. The recommendations are as follows:

#### **5. Availability and Convenience of Legal Disposal Options**

While each county has private collection of solid waste offered in most parts of their respective counties, portions of each county continue to have sections that do not have solid waste collection services, or which are cost prohibitive. To the extent that counties take action on the following recommendations, illegal dumping should decrease in both Montgomery and Wharton Counties.

##### **i. Montgomery County should consider the development of a Type IV landfill or transfer station in the county**

Montgomery County is generating sufficient construction debris that the county should consider the development of either a Type IV landfill, or a transfer station to transport

construction debris to a Type IV landfill in Harris County. While the development of a feasibility analysis for a Type IV landfill in Montgomery County goes beyond the scope of this study, Attachment 11 provides some information with regard to proposed costs associated with a Type IV landfill. In addition, based on several conversations with private solid waste companies, it appears that there is sufficient interest with regard to the development of a Type IV landfill in Montgomery County. If the construction of a Type IV landfill is too “political,” the county should consider the construction of a transfer station (for Type IV materials only). Construction of a transfer station would be a relatively inexpensive solution, as opposed to the construction of a Type IV landfill. A Type IV landfill or transfer station could be structured as a public entity, public-private venture, or private entity.

**ii. Disposal “bonds” or “permits” issued at the time a building permit is issued in Montgomery County**

The project team would recommend that the county consider the creation of a “disposal bond” or “disposal permit” to be issued at the time a building permit is issued in Montgomery County. This would entail the builder posting a bond (\$1,000 to \$2,000, or more, for each residential construction project).<sup>32</sup> When the builder presented the county with copies of tipping fee receipts from a licensed Type I or Type IV landfill, the builder would have his bond money refunded by the county. The project team checked with the county government, and the current building permit system would allow the county to implement this program. A number of governmental entities have instituted ordinances or policies which are similar in nature.<sup>33</sup>

**iii. Wharton County should consider the siting of a citizen collection center near the Community of Boling**

Wharton County is a geographically large county with no active landfills. Three transfer stations/citizen collection centers are available and provide relatively good coverage for the county as a whole as well as all the population centers, with the exception of Boling. The Community of Boling does not have an organized solid waste collection program. A citizen collection center, similar to the one near East Bernard, could be operated in a like manner and would assist in reducing illegal dumping in the Boling region. In addition, with minor modifications the local schools might be able to use such a collection station to dispose of food waste more cost effectively (as is done in East Bernard) providing a mutually beneficial opportunity.

**iv. Wharton County should promote county-wide “amnesty” days**

The project team would recommend that Wharton County consider the development of annual county-wide “amnesty” days. Counties with these types of programs typically designate one or two weekends during the year when bulky items, solid waste, etc. can be brought to the precinct barns for disposal. A user fee may or may not be assessed for disposal of the materials. These programs provide residents with a way in which to get rid of their bulky items and discourages the illegal dumping of these items.

**v. Utilize Wharton County Electric Cooperative**

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<sup>32</sup> A bond would also be issued for commercial construction, but would be based on the square footage of the proposed structure.

<sup>33</sup> City of Dallas, Texas, ordinance no. 22120, requires that all roofers provide proof that the debris has been properly disposed of, prior to receiving a final inspection and approval from the city. Attachment 12.

In conversations with city and county officials within Wharton County the project team learned that the Wharton County Electric Cooperative (Cooperative) provides solid waste collection services to a number of residents within Wharton County. Wharton County should consider entering into conversations with the Cooperative to inquire as to their willingness to expand their service area and possibly their product line (e.g. management of the county-wide clean-up days, recycling drop-off stations).

#### **6. Utilize Harris County's Environmental Enforcement Expertise**

The project team would strongly recommend that Montgomery and Wharton Counties draw upon Harris County's experience with regard to environmental enforcement. Both Harris County's Environmental Enforcement Division and the County Attorney and District Attorney's offices have all agreed to offer their assistance in assisting Montgomery and Wharton Counties in the development/expansion of the counties' current environmental enforcement programs.

#### **7. Centralization of Education, Administration and County-wide Clean-ups**

The project team would recommend that both counties consider the centralization of environmental enforcement functions which would allow for efficiencies to be realized and avoid the duplication of activities. Many of the activities described during the course of this report would continue to be managed at the precinct level using precinct funds (road crew clean-ups, collection and recycling centers, etc.). It is believed centralizing administration of the environmental enforcement program and the accompanying educational efforts will result in equitable distribution of manpower and resources and ensure a consistent program message throughout the county. Commissioners in Montgomery County would continue to coordinate their own precinct's participation in the county-wide clean-up days.

#### **8. Funding of Environmental Enforcement Programs**

At this time, the project team would propose that the funding of environmental enforcement officers be focused at the county level, rather than the municipal level within Montgomery and Wharton Counties. Based on our interviews and observations, the primary emphasis with regard to illegal dumping is at the county level rather than the municipal level within these counties. However, as Montgomery County continues to grow, specifically in the southern portion of the county, it will become necessary to develop partnerships between the municipalities and county to deal with environmental enforcement issues.

An example of a successful "environmental enforcement" partnership between a municipality and county is the current "Rat on a Rat" program which the City of Houston currently has in place to combat illegal dumping. The City of Houston and Harris County have an agreement that allows Harris County environmental enforcement officers to pursue cases within the City of Houston, and visa versa. This partnership allows the city and county to coordinate their environmental enforcement activities while avoiding some of the "turf battles" which sometimes occur in these types of situations.

## **9. Monitor “Renegade Recyclers”**

During the course of our interviews and field visits the project team heard about the problems which some counties were having with regard to “renegade recyclers.” This term refers to companies which promote their firms as recycling companies (yard waste, recyclables, etc.), yet are unable to provide the actual services. For instance, there is one recycler in the H-GAC region that promotes itself as a processor and recycler of yard waste, however, upon review of its operating sites, they appear to more closely resemble an illegal dumpsite than a recycling facility. It is important that environmental enforcement officers monitor these sites to ensure that the operations do not become an illegal dumpsite.

## **10. Collection of Financial and Operational Data**

The following recommendations are made to assist Montgomery and Wharton Counties in monitoring and tracking the financial costs associated with their environmental enforcement programs. The project team has also made a series of recommendations with regard to maintaining a database of operational data concerning environmental issues within each county.<sup>34</sup>

### **A. Track financial costs associated with environmental enforcement**

#### **Findings:**

During the course of this study we found that while many of the precincts had an approximate estimate as to what their environmental enforcement activities cost, the ability to identify/track these costs would have been made much easier if standardized forms had been developed and made available to each precinct. If the cost data were compiled on standardized schedules, by precinct, the costs could be summed for the four precincts, and the county-wide functions (Environmental Health Division, County Attorney’s Office) to determine the total annual costs associated with environmental enforcement in each county. These forms could also be used to assist the precincts, as well as the county, in budgeting and tracking actual environmental enforcement expenditures during the fiscal year.

#### **Recommendations:**

##### **i. Develop standardized forms**

The project team would recommend that standardized forms be developed which would allow the precincts to track their operating and capital costs, by program. For instance, capital and operating costs associated with the clean-up of illegal dumpsites would be

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<sup>34</sup> These recommendations are more detailed in nature than recommendations 5 - 9, due to the fact that the primary focus of this study was to review and quantify the costs associated with illegal dumping. As a result, the project team spent an extensive amount of time reviewing both counties’ financial and operational data.

tracked on one separate schedule.<sup>35</sup> The forms would allow the precinct commissioner to then see how much money is being expended for both capital and operating costs, by program.<sup>36</sup>

**ii. Forms to be completed by each precinct and at the county-wide level**

Each precinct would use the forms to determine its annual costs with regard to environmental enforcement. At the county-wide level, forms would be completed for environmental enforcement related activities that function on a county-wide basis. For instance, at the county-wide level Montgomery County would use the forms to determine the costs associated with the County Attorney's Office, the Environmental Health Division, and administrative responsibilities. The costs for the four precincts and the county-wide functions would then be summarized to determine the annual cost incurred with regard to environmental enforcement.

**iii. Track costs on a monthly, quarterly and annual basis.**

Once the costs have been identified, the precincts, as well as the county, can track these costs on a monthly, quarterly, and/or annual basis to determine if the county is operating within its environmental enforcement budget. By tracking these costs the county will be able to identify any positive as well as negative trends which may be occurring. For instance, if the county is exceeding its projected budget for the clean-up of illegal dumpsites, this may be a signal that illegal dumping is on the rise.

**B. Track operational data associated with environmental enforcement**

**Findings:**

It is critical that both Wharton and Montgomery Counties track key operational data with regard to their environmental enforcement activities. While the counties are already tracking certain types of data (e.g. complaints, warnings, convictions) there are other types of data which we would propose should also be monitored.

**Recommendations:**

**i. Identify key activities to monitor**

In addition to tracking the items listed on the monthly sheet which is completed by the environment enforcement officer (e.g. number of complaints, number of cases tried, number of convictions, etc.) we would propose that the county begin to track the physical location of illegal dumpsites. Using a grid, the county can be divided into numbered sections. This method, used by Harris County Precinct Three, helps identify problem areas, and the section numbers can be included as part of the illegal dumping case number by the enforcement officers. Harris County case numbers include the precinct number, section number, and a "C" or "P" to designate whether the dumping is on county or private property. In addition, these dumpsites could be cataloged by type (e.g.

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<sup>35</sup> The schedules would allow the precinct to allocate equipment and personnel costs between various activities. For instance, if a dump truck is used 20% of the time on the clean-up of illegal dumpsites the forms would allow 20% of the capital and operating costs to be allocated to the clean-up of illegal dumpsites and the remaining 80% to whatever activities it is used for (county road repair, etc.).

<sup>36</sup> Examples of different illegal dumping related programs are: illegal dumpsite clean-ups, litter pick-up, enforcement activities, etc.

residential, commercial, brush trimmings/yard waste, C&D, hazardous, etc.). To the extent “repeat” complaints arise about additional waste being dumped at a site already cataloged, this information should be noted. This will help identify the “chronic” dumpsites.

**ii. Create a database**

After identifying the key activities which the counties are going to monitor, the project team would recommend that each county develop a computerized database of the key activities which would be updated on a monthly basis. This will allow each county to begin to compile a database of key environmental enforcement related activities. Each county will also be able to map where its illegal dumpsites are located by type (C&D, residential, etc.). If the counties have a GIS mapping system which the sites can be overlaid onto, the counties can locate the dumpsites in proximity to water sources (lakes, streams, creeks, etc.)

**iii. Track data on a monthly, quarterly and annual basis**

As the database is added to over the months, the counties will be able to note any trends with regard to whether the dumpsites are located in one particular part of the county, the types of waste at the sites, as well as whether sites are chronic dumpsites. For those sites that are chronic dumpsites, it may warrant a stakeout of the dumpsite by the environmental enforcement officer in hopes of apprehending the illegal dumpers.<sup>37</sup>

**11. Environmental Enforcement Program to be Coordinated with Existing Solid Waste Programs in County**

Montgomery and Wharton Counties should coordinate their environmental enforcement programs with the solid waste services currently offered within each county. This would include those existing solid waste programs offered by the county (roll-offs at the district barn, etc.), as well as the solid waste services offered by the municipalities and private operators within the county. For instance, if Wharton County is educating its citizens as to the health and safety issues associated with illegal dumping and the importance of proper disposal, it is essential that the county list locations where residents can go to dispose of their waste (transfer stations/citizen collection centers in the communities of Wharton, El Campo, and East Bernard).

If each county’s environmental enforcement program is coordinated with the other solid waste programs within the county, the potential duplication of effort (time and money) can be avoided. In addition, it will ensure that the county presents a consistent and unified message with regard to how solid waste is managed within the county.

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<sup>37</sup> Harris County’s Environmental Enforcement Division has begun to compile a database of illegal dumpsites and has found it very beneficial in its policing of chronic illegal dumpsites.

## Schedules

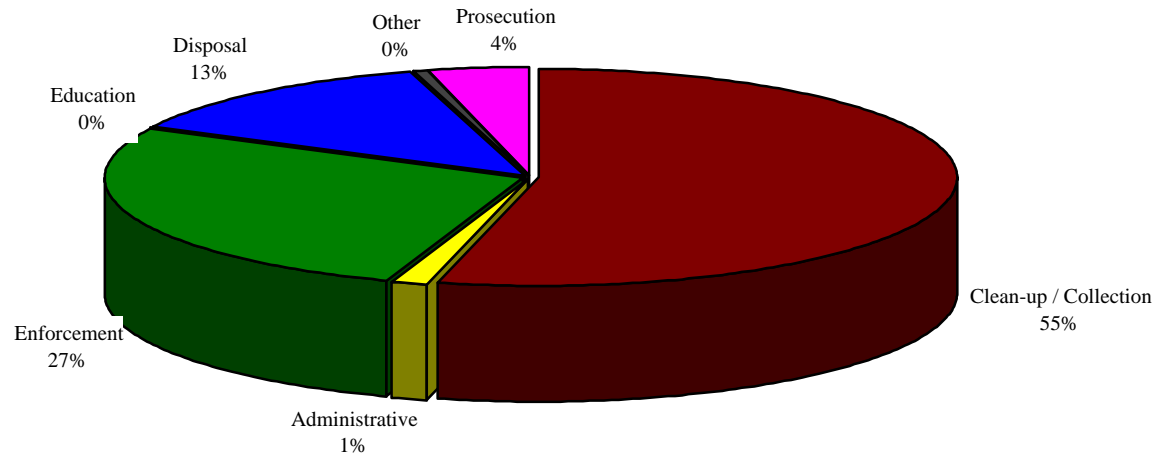
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Illegal Dumping Cost Summary - Montgomery And Wharton Counties.....	Schedule 1
Total Expenditures by Montgomery County For Illegal Dumping.....	Schedule 2
Illegal Dumping Cost Detail - Montgomery County Precinct 1.....	Schedule 3
Illegal Dumping Cost Detail - Montgomery County Precinct 2.....	Schedule 4
Illegal Dumping Cost Detail - Montgomery County Precinct 3.....	Schedule 5
Illegal Dumping Cost Detail - Montgomery County Precinct 4.....	Schedule 6
Total Illegal Dumping Expenditures by Other Entities in Montgomery County...	Schedule 7
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Illegal Dumping Cost Detail - Wharton County Precinct 1.....	Schedule 9
Illegal Dumping Cost Detail - Wharton County Precinct 2.....	Schedule 10
Illegal Dumping Cost Detail - Wharton County Precinct 3.....	Schedule 11
Illegal Dumping Cost Detail - Wharton County Precinct 4.....	Schedule 12

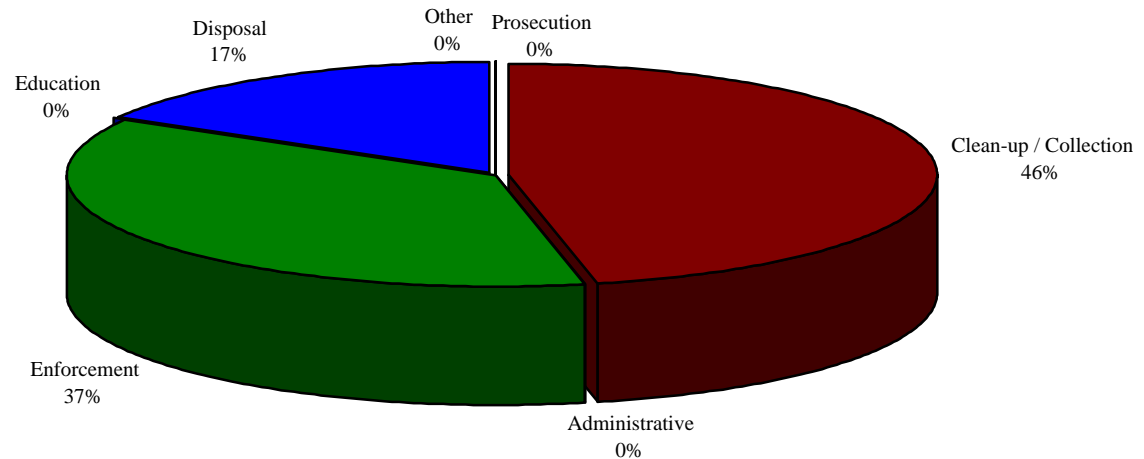
## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Summary - Montgomery and Wharton Counties

#### Montgomery County - Illegal Dumping Expenditures



#### Wharton County - Illegal Dumping Expenditures



**Montgomery County**

Clean-up / Collection	54%	\$210,963
Administrative	1%	\$ 5,428
Enforcement	27%	\$ 105,903
Education	0%	\$ -
Disposal	13%	\$ 51,381
Other	0%	\$ 1,500
Prosecution	4%	\$ 15,600
	100%	\$ 390,775

**Wharton County**

Prosecutio	0%	\$0
Clean-up /	47%	\$ 71,100
Administra	0%	\$0
Enforceme	37%	\$ 55,626
Education	0%	\$ -
Disposal	17%	\$ 25,550
Other	0%	\$ -
	100%	\$152,276

# Houston - Galveston Area Council Illegal Dumping Study

## Total Expenditures by Montgomery County for Illegal Dumping(1)

### Clean-up / Collection

Precinct 1	\$48,480	
Precinct 2	40,332	
Precinct 3	63,906	
Precinct 4	58,245	
	<u>Sub-total</u>	<b>\$210,963</b>

### Disposal

Precinct 1	\$8,250	
Precinct 2	4,800	
Precinct 3	19,351	
Precinct 4	18,980	
	<u>Sub-total</u>	<b>\$51,381</b>

### Enforcement

Precinct 1	\$14,777	
Precinct 2	12,354	
Precinct 3	-	
Precinct 4	53,772	
Environmental Health Division	25,000	
	<u>Sub-total</u>	<b>\$105,903</b>

### Education

**Sub-total                      \$0**

### Administrative

Precinct 4	\$3,328	
County Judge's Office	2,100	
	<u>Sub-total</u>	<b>\$5,428</b>

### Other

Precinct 4	\$1,500	
	<u>Sub-total</u>	<b>\$1,500</b>

### Prosecution

Prosecution	\$15,600	
	<u>Sub-total</u>	<b>\$15,600</b>

**Total Expenditures by Montgomery County                      \$390,775**

#### Notes:

(1) Detail regarding expenditures, by precinct, is provided on Schedules 3 through 6.

## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Detail - Montgomery County Precinct 1

#### Clean-up / Collection

1. Clean-up along County roads and right-of-ways(1)		
labor costs	\$29,536	
capital and operating costs	<u>18,720</u>	\$48,256
2. County-wide clean-up(2)	<u>\$224</u>	\$224
		<u>\$224</u>
<b>Sub-total</b>		<b><u>\$48,480</u></b>

#### Disposal

1. Disposal Costs(3)	<u>\$8,250</u>	
<b>Sub-total</b>		<b>\$8,250</b>

#### Enforcement

1. Posting of Signs (replacement, etc.)		
labor costs	\$5,580	
capital and operating costs	3,952	
signs	<u>5,246</u>	
<b>Sub-total</b>		<b>\$14,777</b>

#### Education

**Sub-total                      \$0**

#### Administrative

**Sub-total                      \$0**

#### Other

**Sub-total                      \$0**

**Total Costs - Precinct 1                      \$71,507**

#### Notes:

- (1) Combination of picking up both illegally dumped materials as well as litter (majority is litter).
- (2) Cost is low because the clean-up was "quickly developed" and the dumpster was made available for only one Saturday, for half a day.
- (3) Roll-off container "pulled" approximately 30 times per year, at \$275 per pull.

## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Detail - Montgomery County Precinct 2

#### Clean-up / Collection

1. Illegal dumpsite clean-ups(1)		
gradall and operator	\$ 13,680	
dump truck and driver (12 cubic yard truck)	4,950	
dump truck and driver (6 cubic yard truck)	630	
Small dump truck and crew	18,000	
		\$37,260
2. Tri-County Services litter control	\$3,072	
		\$3,072
<b>Sub-total</b>		<b>\$ 40,332</b>

#### Disposal

tipping fees	\$ 4,800	
<b>Sub-total</b>		<b>\$ 4,800</b>

#### Enforcement

signs(2)	\$ 2,500	
enforcement officer(3)	9,854	
<b>Sub-total</b>		<b>\$ 12,354</b>

#### Education

<b>Sub-total</b>	<b>\$0</b>
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#### Administrative

<b>Sub-total</b>	<b>\$0</b>
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#### Other

<b>Sub-total</b>	<b>\$0</b>
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<b>Total Cost - Precinct 2</b>	<b><u>\$ 57,486</u></b>
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#### Notes:

- (1) Includes capital costs for equipment in addition to repairs, fuel, etc. associated with operating equipment. Labor costs are also included.
- (2) Includes salary, benefits, equipment and materials for installing signs.
- (3) 20% of officer's time. Includes labor, vehicle costs, materials. (Based on 20% of Precinct 4's enforcement officer's costs.)

## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Detail - Montgomery County Precinct 3

#### Clean-up / Collection

1. Front-end loader (to compact dumpsters)		
labor costs	\$364	
capital and operating costs(1)	420	
		\$784
2. Illegal dumpsite clean-ups		
labor costs	\$17,952	
capital and operating costs(1)	13,800	
		\$31,752
3. Tri-County Services, litter control(2)	\$25,934	
		\$25,934
4. Removal of illegally placed items (signs, etc.)	\$4,800	
		\$4,800
5. County-wide clean-ups	\$635	
		\$635
<b>Sub-total</b>		<b>\$ 63,906</b>

#### Disposal

1. 30 cubic yard dumpster at Precinct 3 barn		
rental	\$600	
collection & disposal (72 "pulls" at \$236.37 per pull)	17,019	
		\$17,619
2. 8 cubic yard dumpster near ball park	\$511	
		\$511
3. Tipping fees(3)	\$ 1,221	
		\$1,221
<b>Sub-total</b>		<b>\$19,351</b>

#### Enforcement

**Sub-total** **\$0**

#### Education

**Sub-total** **\$0**

#### Administrative

**Sub-total** **\$0**

#### Other

**Sub-total** **\$0**

**Total Costs - Precinct 3** **\$83,256**

#### Notes:

(1) Operating costs defined as fuel, oil, repairs, etc. It does not include labor costs. Labor costs are shown separately.

(2) Litter control includes picking up items dumped in the County right-of-ways.

(3) These tipping fees are in addition to the disposal fees paid for the collection and disposal of roll-offs.

## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Detail - Montgomery County Precinct 4

#### Clean-up / Collection

1. Illegal dumpsite clean-ups		
labor costs	\$40,960	
capital and operating costs	<u>10,785</u>	\$51,745
2. Meals for T.D.C. inmates	<u>\$6,500</u>	\$6,500
<b>Sub-total</b>		<u><b>\$58,245</b></u>

#### Disposal

1. Collection and "pulling" of dumpsters(1)	<u>\$18,980</u>	
<b>Sub-total</b>		<b>\$18,980</b>

#### Enforcement

1. Signage	<u>\$4,500</u>	\$4,500
2. Enforcement Officer (salary and benefits)		
labor costs	\$41,472	
vehicle costs	5,400	
materials	<u>2,400</u>	\$49,272
<b>Sub-total</b>		<u><b>\$53,772</b></u>

#### Education

**Sub-total                      \$0**

#### Administrative

1. Receptionist	<u>\$3,328</u>	
<b>Sub-total</b>		<b>\$3,328</b>

#### Other

1. Adopt-A-County Mile Program	<u>\$1,500</u>	
<b>Sub-total</b>		<u><b>\$1,500</b></u>

**Total Costs - Precinct 4                      \$135,825**

#### Notes:

(1) Dumpster "pulled" once per week at \$365 per "pull".

**Houston - Galveston Area Council  
Illegal Dumping Study**

**Total Illegal Dumping Expenditures by Other Entities in Montgomery County**

**City of Oak Ridge North**

1. clean-up, enforcement, etc.	\$ 2,500
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**Montgomery County Drainage District #6**

1. removal of illegally dumped materials,	\$ 53,026
2. law enforcement	41,490
3. administration	<u>4,610</u>

<b>Total Expenditures by Other Entities</b>	<b><u><u>\$101,626</u></u></b>
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## Houston - Galveston Area Council Illegal Dumping Study

### Total Expenditures by Wharton County for Illegal Dumping(1)

**Clean-up / Collection**

Precinct 1	\$10,000	
Precinct 2	41,100	
Precinct 3	10,000	
Precinct 4	10,000	
<b>Subtotal</b>	<u>71,100</u>	<b>\$71,100</b>

**Disposal**

Precinct 2	<u>\$25,550</u>	<b>\$25,550</b>
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**Enforcement**

1. Enforcement Officer(2)	<u>\$55,626</u>	
<b>Subtotal</b>		<b>\$55,626</b>

**Education**

<b>Subtotal</b>	<b>\$0</b>
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**Administrative**

<b>Subtotal</b>	<b>\$0</b>
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**Other**

<b>Subtotal</b>	<b>\$0</b>
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**Prosecution**

<b>Subtotal</b>	<u><b>\$0</b></u>
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<b>Total Expenditures by Wharton County</b>	<u><u><b>\$152,276</b></u></u>
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**Notes:**

- (1) Detail regarding expenditures, by precinct, is provided on Schedule 9 through 12.  
 (2) Includes salary, benefits, equipment and materials. Staffed in Sheriff's Department.

## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Detail - Wharton County Precinct 1

<b>Clean-up / Collection</b>
------------------------------

1. Illegal dumpsite clean-ups(1)

	<u>\$10,000</u>	
<b>Subtotal</b>		<b>\$10,000</b>

<b>Disposal</b>
-----------------

		<b>\$0</b>
<b>Subtotal</b>		

<b>Enforcement</b>
--------------------

		<b>\$0</b>
<b>Subtotal</b>		

<b>Education</b>
------------------

		<b>\$0</b>
<b>Subtotal</b>		

<b>Administrative</b>
-----------------------

		<b>\$0</b>
<b>Subtotal</b>		

<b>Other</b>
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		<u><b>\$0</b></u>
<b>Subtotal</b>		

<b>Total Costs - Precinct 3</b>		<u><u><b>\$10,000</b></u></u>
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**Notes:**

(1) Precinct does not keep any type of records as to clean-up and disposal costs. At present, the Precinct's road crews pick up illegally dumped items on an "as needed" basis. This \$10,000 includes both collection and disposal costs.

## Houston - Galveston Area Council Illegal Dumping Study

### Illegal Dumping Cost Detail - Wharton County Precinct 2

#### Clean-up / Collection

1. Citizen collection center(1)		
operating costs	\$ 29,450	
capital costs	<u>3,650</u>	
		\$33,100
2. Illegal dumpsite clean-ups	<u>\$8,000</u>	
		<u>\$8,000</u>
<b>Subtotal</b>		<b>\$ 41,100</b>

#### Disposal

1. Disposal costs (illegal)	<u>\$ 4,000</u>	
		\$ 4,000
2. Disposal costs (collection center)	<u>\$21,550</u>	
		<u>\$ 21,550</u>
<b>Subtotal</b>		<b>\$ 25,550</b>

#### Enforcement

**Subtotal** **\$0**

#### Education

**Subtotal** **\$0**

#### Administrative

**Subtotal** **\$0**

#### Other

**Subtotal** **\$0**

**Total Cost - Precinct 2** **\$ 66,650**

#### Notes:

- (1) All capital costs included, and amortized, with exception of the purchase of land \$11,000, which is not included in these costs, because these costs represent the "normalized" annual costs of dealing with illegal dumping.

**Houston - Galveston Area Council  
Illegal Dumping Study**

**Illegal Dumping Cost Detail - Wharton County Precinct 3**

**Clean-up / Collection**

1. Illegal dumpsite clean-ups(1)

	Subtotal	<u>\$10,000</u>	\$10,000
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**Disposal**

	Subtotal		\$0
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**Enforcement**

	Subtotal		\$0
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**Education**

	Subtotal		\$0
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**Administrative**

	Subtotal		\$0
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**Other**

	Subtotal	<u>\$0</u>	
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	Total Costs - Precinct 3	<u><u>\$10,000</u></u>	
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**Notes:**

(1) Precinct does not keep any type of records as to clean-up and disposal costs. At present, the Precinct's road crews pick up illegally dumped items on an "as needed" basis. This \$10,000 includes both collection and disposal costs.

**Houston - Galveston Area Council  
Illegal Dumping Study**

**Illegal Dumping Cost Detail - Wharton County Precinct 4**

**Clean-up / Collection**

1. Illegal dumpsite clean-ups(1)

	<u>\$10,000</u>	
<b>Subtotal</b>		<b>\$10,000</b>

**Disposal**

		<b>\$0</b>
<b>Subtotal</b>		

**Enforcement**

		<b>\$0</b>
<b>Subtotal</b>		

**Education**

		<b>\$0</b>
<b>Subtotal</b>		

**Administrative**

		<b>\$0</b>
<b>Subtotal</b>		

**Other**

	<u><b>\$0</b></u>	
<b>Subtotal</b>		

		<u><u><b>\$10,000</b></u></u>
<b>Total Costs - Precinct 3</b>		

**Notes:**

(1) Precinct does not keep any type of records as to clean-up and disposal costs. At present, the Precinct's road crews pick up illegally dumped items on an "as needed" basis. This \$10,000 includes both collection and disposal costs.

## Maps

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Houston-Galveston Area Council.....	Map 1
Montgomery County.....	Map 2
Wharton County.....	Map 3

[illegible]

*Houston-Galveston Area Council January 2001*

# Permitted MSW Facilities in the H-GAC Region – 1997

Permit	Permittee	Type	Status	Nearest City
81	City of Conroe	I	Inactive	Conroe
164	Gulf Coast Waste Disposal Authority	TS	Active	Galveston
203	Laidlaw Environmental Services	I	Active	Altair
261	Browning-Ferris, Inc.	I	Active	Houston
1092	City of Houston	TS	Active	Houston
1093	Matagorda County	I	Inactive	Bay City
1149	Browning-Ferris, Inc.	I	Active	Galveston
1193	Browning-Ferris, Inc.	I	Active	Houston
1233	City of Liberty	TS	Active	Liberty
1247	Doty Sand Pit Venture	IV	Active	Houston
1279	Waste Management of Texas, Inc.	I	Active	Houston
1301	Sanifill of Texas, Inc.	IV	Inactive	Houston
1307	Waste Management of Texas, Inc.	I	Active	Houston
1389	Sanifill of Texas, Inc.	IV	Active	Houston
1396	Sprint Industries, Inc.	IV	Active	Houston
1403	Casco Hauling & Excavating	IV	Active	Houston
1441	Sanifill of Texas, Inc.	IV	Active	Houston
1478	Sanifill of Texas, Inc.	IV	Inactive	Houston
1483	Urban Waste Technology, Ltd.	IV	Inactive	Houston
1502	Chambers County	I	Active	Monroe City
1505	Browning-Ferris, Inc.	I	Active	Houston
1535	Sanifill of Texas, Inc.	I	Active	Baytown
1539	Brazoria County Recycling Center	I	Active	Clute
1540	Sanifill of Texas, Inc.	IV	Inactive	Pasadena
1554	Fort Bend County	I	Inactive	Rosenberg
1565	Sanifill of Texas, Inc.	IV	Active	Houston
1578	Sanifill of Texas, Inc.	IV	Inactive	Houston
1586	Waste Reduction Systems, Inc.	IV	Inactive	Houston
1599	G.O. Weiss, Inc.	IV	Active	Houston
1680	Galveston County	TS	Active	Crystal Beach
1683	Sprint Industries, Inc.	IV	Inactive	Sugar Land
1697	City of Deer Park	TS	Active	Deer Park
1708	Hill Sand Company, Inc.	IV	Active	Pearland
1721	Waste Management of Texas, Inc.	I	Active	Alvin
1752	Waste Management of Texas, Inc.	I	Active	Cut and Shoot
1757	Western Waste Industries of Texas	I	Inactive	Conroe
1765	City of La Porte	I	Inactive	La Porte
1797	Sprint Industries, Inc.	IV	Inactive	Houston
1849	Transamerican Waste of Houston	IV	Active	League City
1897	Sanifill of Texas, Inc.	I	Active	Angleton
1921	Sanifill of Texas, Inc.	IV	Active	Houston
2099	City of Wharton	TS	Active	Wharton
2106	City of Weimar	TS	Active	Weimar
2185	Sanifill of Texas, Inc.	IV	Inactive	Houston
2215	Darrell Dickey, Inc.	I	Active	Huntsville
2239	Chambers County	I	Proposed	Monroe City
2240	Sanifill of Texas, Inc.	IV	Inactive	Houston
40014	City of Hempstead	TS	Active	Hempstead
40025	City of Sealy	TS	Active	Sealy
40028	Matagorda County	TS	Active	Bay City
40050	Country Waste	TS	Active	Bellville
40056	City of Huntsville	TS	Active	Huntsville

## Citizen Convenience Stations

Name / Location	Status	County
Anahuac	Active	Chambers
Beach City	Active	Chambers
Double Bayou	Active	Chambers
Mont Belvieu / Old River	Active	Chambers
Oak Island	Active	Chambers
Smith Point	Active	Chambers
Wallisville / Hankamer	Active	Chambers
Winnie / Stowell	Active	Chambers
Biosphere 1 Recycle Center / Texas City	Active	Galveston
City of Deer Park	Active	Harris
Liberty County Precinct #1 / Raywood	Active	Liberty
Liberty County Precinct #2 / Hull	Active	Liberty
Liberty County Precinct #2 / Rye	Active	Liberty
Liberty County Precinct #3 / Cleveland	Active	Liberty
Liberty County Precinct #4 / Dayton	Active	Liberty
El Matron	Active	Matagorda
City of Conroe / BFI	Active	Montgomery
Wharton County Precinct #2 / East Bernard	Active	Wharton
City of El Campo	Active	Wharton

# MUNICIPAL SOLID WASTE FACILITIES






## MONTGOMERY COUNTY

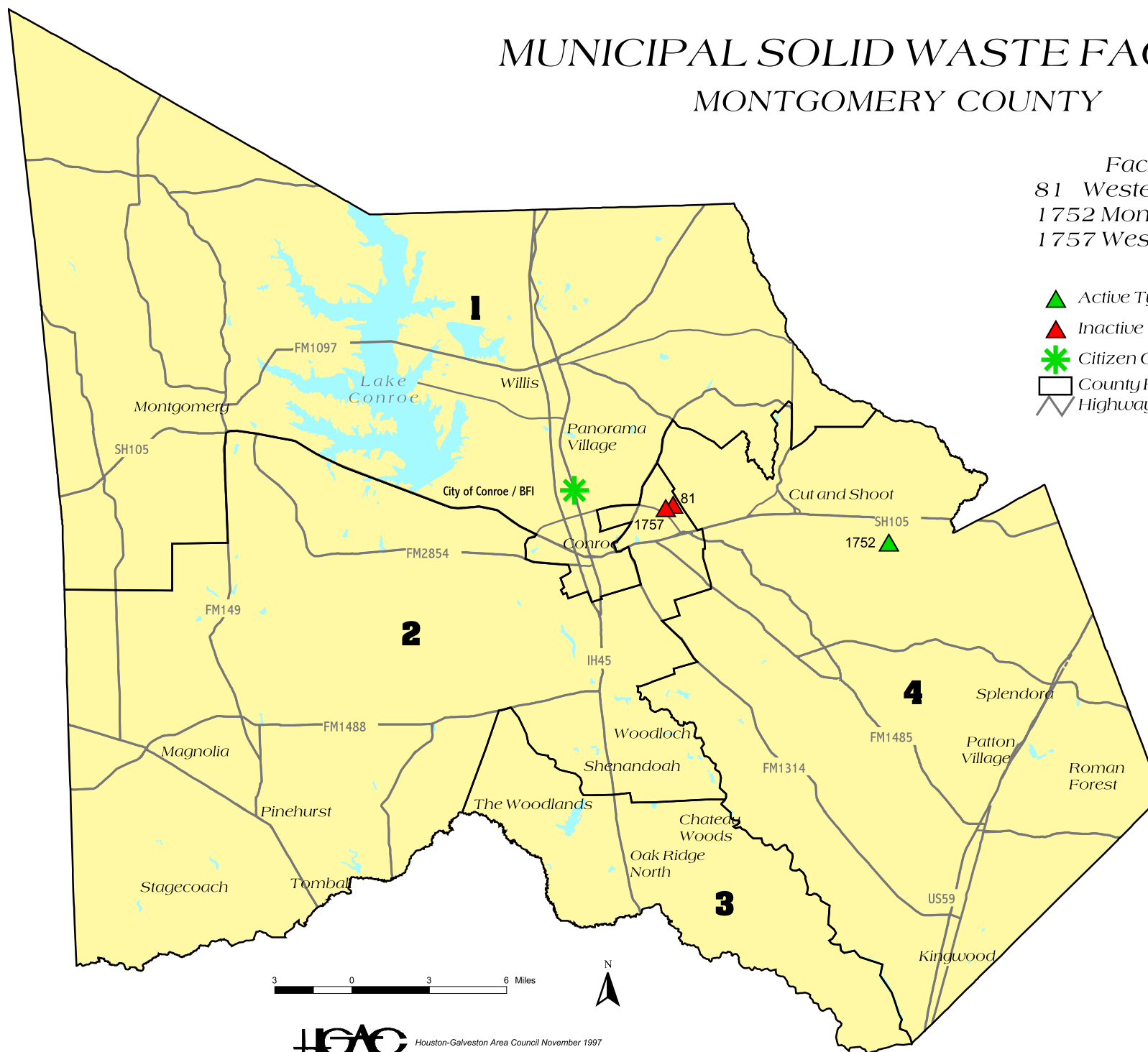
### Facility List

81 Western Waste/City of Conroe

1752 Montgomery Contractors

1757 Western Waste

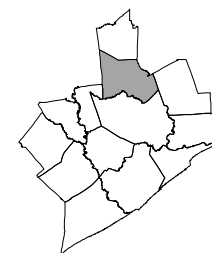
-  Active Type I Facility
-  Inactive Type I Facility
-  Citizen Collection Station
-  County Precinct Boundary
-  Highway



3 0 3 6 Miles

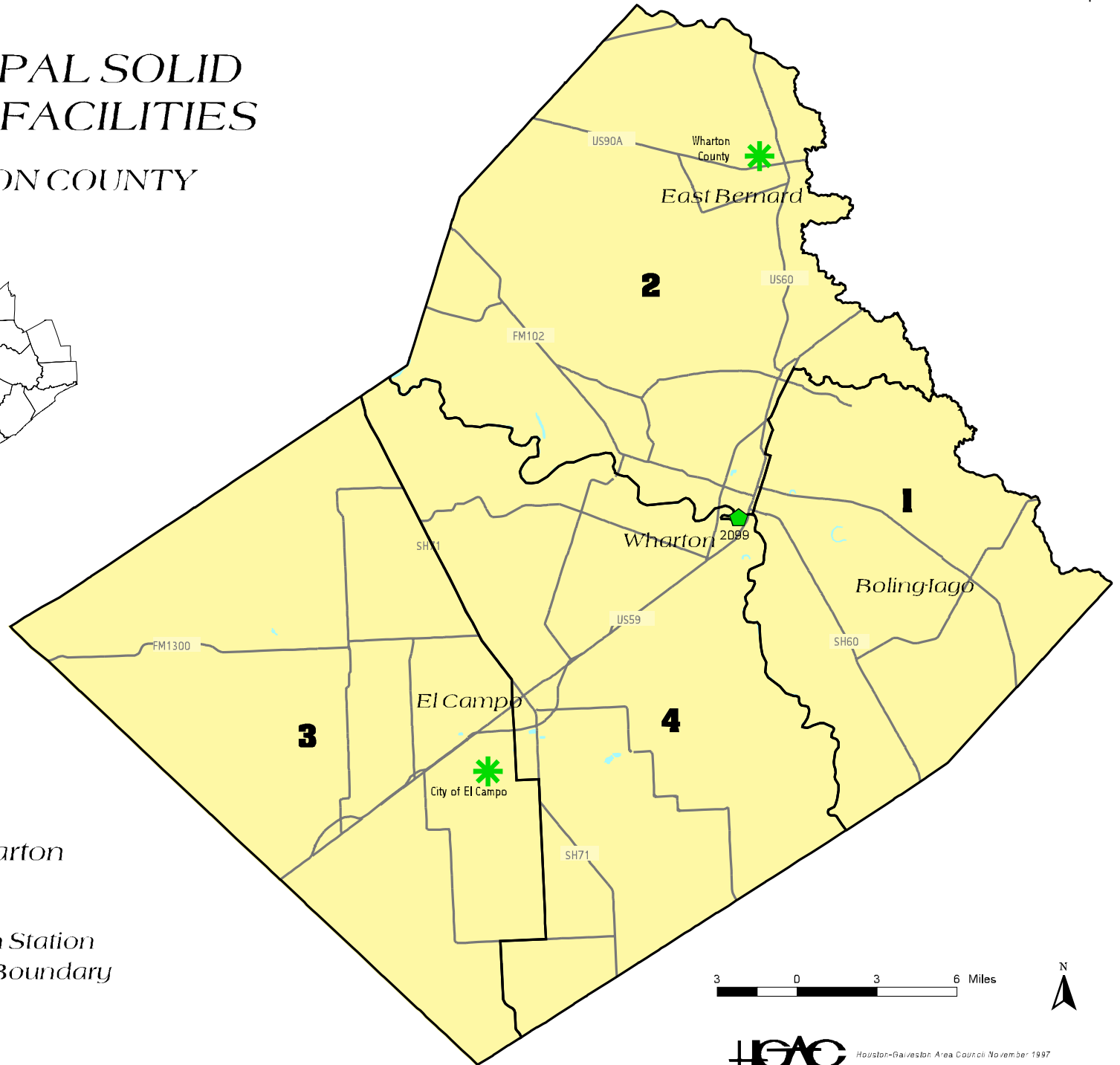
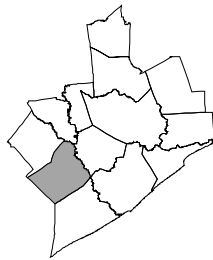


Houston-Galveston Area Council November 1997



# MUNICIPAL SOLID WASTE FACILITIES

## WHARTON COUNTY



Facility List  
2099 City of Wharton

-  Transfer Station
-  Citizen Collection Station
-  County Precinct Boundary
-  Highway

3 0 3 6 Miles



Houston-Galveston Area Council November 1997

## **Appendix A**

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Limited Survey Of Environmental Enforcement Programs Throughout the US  
Schedule A-1 Limited Survey Of Other County Programs

## **LIMITED SURVEY OF ENVIRONMENTAL ENFORCEMENT PROGRAMS THROUGHOUT THE UNITED STATES**

The project team conducted a limited survey<sup>1</sup> of counties throughout the United States that have environmental enforcement programs. While this survey is not meant to provide a comprehensive review of how county governments in the United States deal with illegal dumping, the survey is helpful in affirming some of the recommendations proposed by the project team. In addition, the survey aided us in identifying some strategies which Montgomery and Wharton Counties may wish to consider at some point in the future.

Commercial construction and demolition (C&D) debris remain the major illegal dumping focus of most counties that are experiencing a significant growth in population. Most of these counties have realized the correlation and have since implemented more progressive and proactive programs to combat illegal dumping. A listing<sup>2</sup> of counties with growth characteristics similar to Montgomery County has provided a broad model for comparative examination. Also, several rural counties were contacted to address illegal dumping issues similar to Wharton County.

Several illegal dumping programs have been highlighted and summarized from our listing. They are as follows:

### **1. The Keep Oklahoma Beautiful, Inc. Solid Waste Illegal Dumping Task Force Report**

This report summarizes statewide levels of illegal dumping in Oklahoma. Oklahoma county commissioners responded to a survey issued by the Solid Waste Illegal Dumping Task Force. Key findings are as follows:

- a) There are 2,500 illegal dumpsites on Oklahoma public property. That is about 32 dumps per county. Most dumpsites cover an average of 1/4 acre or more. Clean-up costs are extreme. County commissioners have determined the costs to properly dispose of illegally dumped materials can go as high as \$25 per load with each 1/4 acre dump averaging 10 dumploads.
- b) Every year, county commissioners estimate they dispatch illegal dumping clean-up crews 4,600 times at an annual cost of \$750,000 to Oklahoma taxpayers.
- c) State agencies estimate another \$300,000 is spent annually to clean-up dumps along state highways and right-of-ways.
- d) Oklahoma taxpayers spend more than \$1 million each year in an attempt to halt or control the spread of the state's illegal dumpsites.
- e) One time clean-up cost to the taxpayers for these 2,500 dumps is estimated at \$3,900,000<sup>3</sup>

### **2. Lee County, Florida**

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<sup>1</sup> Schedule A-1

<sup>2</sup> US Bureau of the Census -- <http://www.census.gov/>

<sup>3</sup> Does not include dumping on private land or litter duty, thus, a conservative figure.

- a) Lee County collects a \$.60 per ton surcharge for all solid waste. These funds are earmarked to finance an environmental enforcement program that currently costs \$150,000 per year. The program funds four deputies and their transportation costs in order to cover a quadrant of the 575 square mile county. Each of the deputies works in a decentralized manner patrolling the existing illegal dumpsites within their own quadrant. Each deputy also specializes in a specific waste material<sup>4</sup> and maintains current knowledge on safety, recycling and disposal of those waste materials. Strong lines of communication throughout the county allow the deputies to share knowledge of specific waste material, and apply the proper safety and enforcement procedures.
- b) The Lee County deputy who specializes in the disposal of tires designed an aggressive program that has successfully removed thousands of illegally dumped tires<sup>5</sup>. The county found a vendor who recycled tires into useful products such as sports turf, mulch, and weed mats around road signs. The manufacturer of recycled products also makes playground surfaces out of tires. The county had one of their parks resurfaced with the spongy, shock absorbing matting, which is much safer for children to play on than conventional surfaces.

The project team has developed a matrix<sup>6</sup> that provides current recycling options for Montgomery and Wharton Counties to consider when disposing of construction and demolition materials. If a construction and demolition landfill is not built, this information will provide the Counties with a current listing of businesses in Texas and Louisiana which recycle various C&D materials.

### **3. Solid Waste Management District - (Jackson, Gallia, Meigs, and Vinton Counties, Ohio)**

- a) The four rural counties surveyed in Ohio formed a joint Solid Waste Management District to combat illegal dumpers in the southeast region of the state. Each county has a sheriff's deputy who spends twenty hours per week on illegal dumping issues. A surcharge on tipping fees fund .5 FTE of a sheriff's deputy per county to enforce illegal dumping.
- b) The Solid Waste Management District has significant problems with construction and demolition debris from the county's own residents. Typically, high growth counties have problems with C&D, but the rural southeast region of Ohio has endured severe flooding this season; therefore, homeowners have been gutting and repairing their homes and illegally disposing of the materials.
- c) Tires have been the other concern of these counties. The district has become a target for illegal commercial tire dumping. Companies load tires in unmarked covered trailers in Columbus and dump the tires in the rural counties within the District. These acts have been nearly impossible for the part-time enforcement officers to proactively combat and attempt to "catch" in the act.

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<sup>4</sup> i.e. hazardous waste, tires, construction & demolition and household solid waste

<sup>5</sup> 1,801 in 1993 alone

<sup>6</sup> Schedule B-1

- d) Even when an illegal dumper is apprehended, many of the cases are seen as “low priority”; thus, they are dismissed by judges.
- e) Counties in Ohio do not have the ability to draft ordinances and must therefore rely on the State of Ohio to enact legislation with regard to the prosecution of illegal dumpers.

#### **4. Gwinnet County, Georgia**

- a) Gwinnet County has recently consolidated what was a very disorganized environmental enforcement program into one which currently has designated two environmental enforcement officers covering a 442 square mile area.
- b) The rapid growth and expansion in Atlanta has developed severe construction and demolition dumping on its public property and right-of-ways. The problem has been magnified since the county does not have a C&D disposal facility.
- c) All solid waste services within the county are privatized. The private operators pay a regulatory fee to the county to fund the enforcement budget. The fees fund a \$400,000 annual illegal dumping enforcement budget.
- d) Although C&D illegal dumps have been a problem, the county does not plan on constructing a C&D landfill. Currently, private operators drive to one of the five type IV sites in the Atlanta metro area, outside the county. Lack of accessibility to a C&D landfill may continue to yield illegal dumpsites within the county.

#### **5. Dade County, Florida**

Dade County has significantly reduced their illegal dumping problems by taking a proactive approach. They believe the current program is one of the most progressive in the nation.

- a) Dade County operates utilizing a “three pronged approach,” this approach consolidates the services of the Metro-Dade Police Department, the Office of the State Attorney and Dade Solid Waste Management (DSWM). This cooperative effort allows for the investigation, arrest, and prosecution of persons who commit illegal dumping.
- b) In addition, a “special master” program has been implemented. These county enforcement personnel are empowered to issue civil citations carrying fines from \$250 to \$1,000.
- c) The enforcement personnel are supplemented with ten undercover illegal dumping enforcement units. This group is not certified to issue citations, but maintain lines of communication with proper enforcement authorities over police radio channels from common illegal dumpsites (i.e. stakeouts).
- d) The special master program uses a third party that is not a government employee to render impartial decisions.

## 6. Maricopa County, Arizona

- a) Maricopa County's environmental enforcement program is split between the County Board of Health and the Arizona Department of Environmental Quality (ADEQ).
- b) A budget of \$60,000 has been established to fund the nation's fastest growing county<sup>7</sup> with one enforcement officer and one vehicle.
- c) Maricopa has over 9,000 square miles of land to patrol.
- d) Aggressive pursuance of illegal dumpers "caught in the act" has been an impossibility with one officer to cover the entire county; therefore, the enforcement officer fields complaints over the phone in more of a reactionary form of enforcement. Complaints and illegal dumpsites have grown and are projected to continue under the current program.

## 7. Palm Beach County, Florida

In 1989 Palm Beach County had an estimated 740 acres of illegal dumpsites across the 2,300 square mile county. In 1990, the Illegal Dumping Task Force was formed and has been comprised of individuals from the following agencies:

- |  |  |
|--|--|
| ◆ County Sheriff's Office                  | ◆ County Environmental Control Office    |
| ◆ State Attorney's Office                  | ◆ Department of Environmental Protection |
| ◆ County Code Enforcement                  | ◆ County Public Health Unit              |
| ◆ County Property Department               | ◆ The Solid Waste Authority              |
| ◆ County Real Estate Management Department |  |

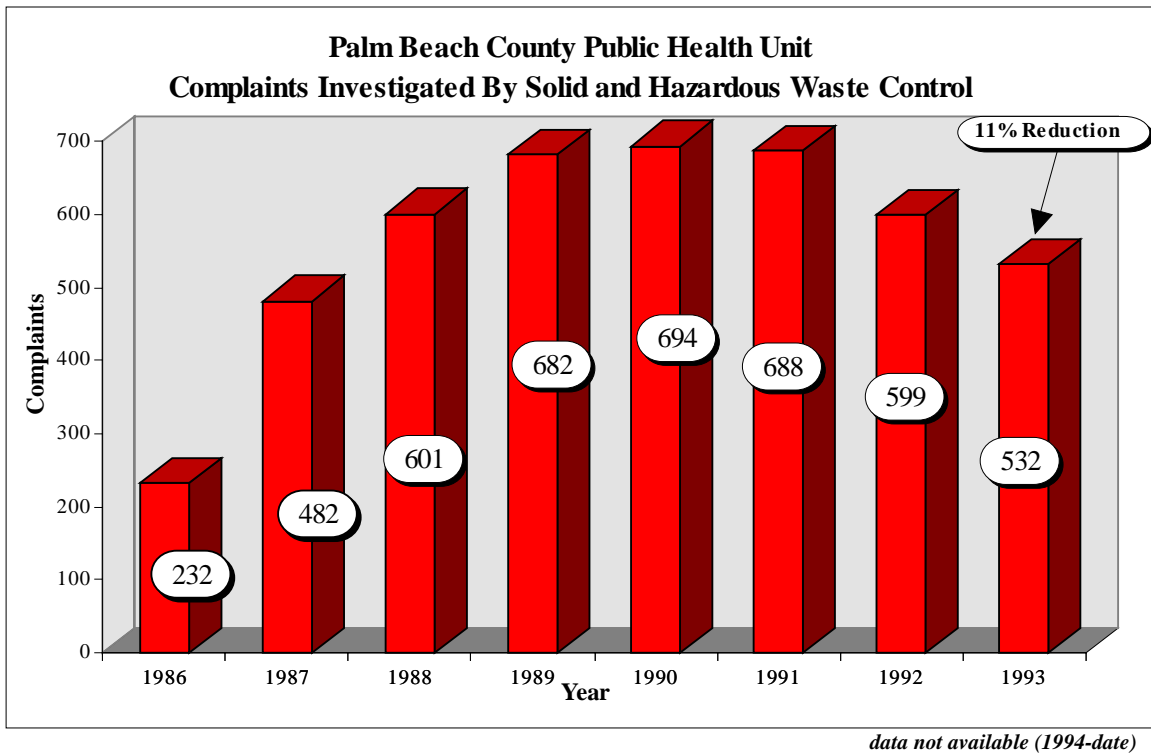
The Task Force has been very successful at achieving the program's goals. This is due, in large part to full commitment and cooperation of all agencies involved.

- a) Repeat offenders have been given prison sentences.
- b) Vehicles involved in the commission of felonies have been confiscated.
- c) Clean-up and restoration has been required for those prosecuted.
- d) Civil penalties as well as community service has been imposed.

A key factor that illustrates the success of an environmental enforcement program is the number of complaints investigated within the county. The following bar graph illustrates the number of complaints over an eight year period.

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<sup>7</sup> based on a physical population gain of 489,226 people. (1990-1996)



This graph is evidence that a combination of commitment by the Illegal Dumping Task Force and strict enforcement has helped to curb Palm Beach County's illegal dumping problem since the Task Force's inception in 1990.

## H-GAC Illegal Dumping Study

### Limited Survey of Other County Programs

<u>County</u>	<u>State</u>	<u>Contact(s)</u>	<u>Phone Number</u>	<u>Size</u> <u>(sq. miles)</u>	<u>Population</u>	<u>Number of</u> <u>Enforcement</u> <u>Officers(1)</u>	<u>Primary</u> <u>Wastes</u> <u>Found</u>	<u>Ability to</u> <u>Draft Ordinances</u>
◆ Dade	FL	Joe Ruiz Mira Austin	(305) 594-1520 (305) 594-1664	2,200	2,000,000	10 Undercover(2)	Tires, C&D and Hazardous	Yes
◆ Lee	FL	Dave Archer Rick Klontz	(941) 691-7533 (941) 338-3102	575	350,000	4 Deputies	Tires, C&D, Hazardous and Household	Yes
◆ Palm Beach	FL	Ken Berg	(561) 697-2700	2,300	1,000,000	2 Deputies	Tires, C&D and Yard Waste	Yes
◆ Wake	NC	Johnny Beal	(919) 856-6191	843	538,380	.5 Officers	C&D and Yard Waste	Yes(3)
◆ Maricopa	AZ	Mark Richardson	(602) 506-3867	9,000	2,500,000	1 Officer	Tires and C&D	Yes
◆ Gwinnett	GA	Connie Wiggins	(770) 822-5187	442	480,000	2 Officers	Tires, C&D, Hazardous and Household	Yes
◆ Jackson	OH	Joe Wright	(614) 286-6464	400	36,000	.5 Deputies	Tires and C&D	No
◆ Gallia	OH	Bonnie Pierce	(614) 446-1221	445	36,000	.5 Deputies	Tires and C&D	No
◆ Meigs	OH	James Saulsby	(614) 992-3371	435	29,000	.5 Deputies	Tires and C&D	No
◆ Vinton	OH	Angie Mitchell	(614) 596-5242	435	15,000	.5 Deputies	Tires and C&D	No

#### Texas Counties

◆ Tarrant	TX	Jack Allen	(817) 238-4410	950	1,320,103	3 Officers	C&D	No
◆ Bexar	TX	Jim Clark	(210) 207-8853	1,248	1,335,394	0 Officers	C&D	No
◆ Collin	TX	Ron James	(972) 547-5116	900	372,445	1 Officer	Tires, C&D and Household	No
◆ Cameron	TX	Leslie De Los Santos	(956) 399-3679	1,172	340,120	2 Officers	C&D and Household	No
◆ Harris	TX	Ted Heap	(713) 755-6306	1,734	3,022,165	4 Officers	C&D and Household	No
◆ Montgomery	TX	Jim Strong	(409) 539-7812	1,090	236,192	1.2 Officers	C&D, Household and Bulky Items	No
◆ Wharton	TX	Elloyd Canales	(409) 543-1373	1,076	40,990	1 Officer	Tires, C&D, Bulky, Yard Waste, and Household Materials	No

#### Notes:

- (1) Officers that exclusively enforce illegal dumping (fractions are a result of part-time enforcement personnel)
- (2) Does not include part time enforcement that could not be quantified.
- (3) Only if county ordinances are more stringent than state statutes

## **Appendix B**

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Construction And Demolition Recycling In Texas  
Schedule B-1 C&D Recycling Option Matrix

## **CONSTRUCTION AND DEMOLITION RECYCLING IN TEXAS**

During the course of this study the project team reviewed the feasibility of recycling the construction and demolition debris (C&D) which is currently being generated within Montgomery County. The following synopsis will provide a brief overview with regard to C&D recycling, the status of C&D recycling in the United States, as well as a review of C&D recycling within the State of Texas.

### **C&D Recycling**

It is estimated that C&D comprises 18 to 25 percent of the nation's waste stream. With the rapid rise in tipping fees in recent years due to Subtitle D, there has been an increased interest in diverting as much C&D debris as possible from landfills. As a result, there has been an increase in the number of sites throughout the United States that have begun to recycle construction and demolition debris. It is estimated that there are at least 2,000 plants in North America that process waste concrete, asphalt, wood, gypsum or shingles into reusable products.<sup>1</sup>

In the construction of homes the majority of waste material generated is wood. In a 1993 study for Portland, Oregon's waste management utility, a study titled "Characterization of Construction Site Waste" estimated that wood comprises 58% to 77% of the total waste generated from a single family residential home.<sup>2</sup>

There are two basic types of facilities that process C&D materials. The first type, is characterized by its requirement for source separation, and accepts only clean loads of a single material such as concrete, asphalt or wood. Processing usually consists of a grinder, hammermill, or shredder, followed by sizing through a trommel screen or vibrating deck screen. The second type of facility processes mixed C&D material. The material is brought into a tipping area, usually in a dump truck or roll-off container. The material is then inspected for any contaminants prior to processing. Salvaging of the materials is then done by hand and/or with a grapple or front end loader. Large pieces of plywood, etc. are pulled from the pile for processing. The remaining materials are fed into a screen and then passed along a conveyor for additional hand-picking of salvageable components. The remaining materials are then usually shred. Depending on the size of the waste stream, C&D recycling facilities can range in size from 50 tons per day to over 2,500 tons per day.<sup>2</sup>

Recycled wood is often used as a boiler fuel or particle board feedstock, while recycled concrete is used in the construction of new roadways. Depending on state regulations the mulched wood can also be used as an alternative daily cover at landfills.<sup>3</sup> The market for drywall is more unstable. To-date, drywall is re-used only by wallboard plants, although there are two small pilot programs to turn it into fertilizer pellets and animal bedding.<sup>4</sup>

### **C&D Recycling in the United States**

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<sup>1</sup> "Diverse and Conquer," World Waste, August 1997, p.38.

<sup>2</sup> "Settling the Dust on C&D Wastes," MSW Management, January/February 1995, p.25.  
(for a copy of the study, contact Portland METRO)

<sup>3</sup> The use of wood chips as a daily cover was in another state. TNRCC would need to be contacted to determine whether that is a legal option in Texas.

<sup>4</sup> "C&D Debris: Construction and Dismantling?" Waste Age, April 1994, p.169.

While there are firms throughout the United States, and Texas, which accept one or two materials (concrete, asphalt, or wood), the majority of recyclers that accept a complete line of C&D materials (concrete, asphalt, wood, gypsum board, metal, glass, etc.) are located primarily in the eastern and southeastern parts of the United States. There are also a number of recyclers on the west coast (specifically, California, Oregon, British Columbia). The feasibility of operating a fully integrated C&D recycling facility, that accepts all types of C&D materials, is driven by higher tipping fees in those parts of the country. In addition, in some states specific legislation has been enacted which encourages the recycling of C&D.

In the Portland area tipping fees have increased from \$17 per ton in 1989 to \$75 per ton in 1995. According to a Portland METRO official, the recycling of wallboard began when tipping fees reached \$60 to \$65 per ton.<sup>2</sup>

### **C&D Recycling in Texas**

In a conversation with Mr. William Turley, Editor for “C&D Debris Recycling” magazine, he stated that Texas is a “tough” market for C&D recycling because tipping fees are still fairly low compared to other parts of the United States. He said that the cement and asphalt recycling markets are fairly well established in Texas, but markets for materials like wood and gypsum board were much more limited due to the low tipping fees.

He proposed that Montgomery County consider the purchase of a tub grinder which could be used at the Type IV landfill, if a landfill were developed. The county could still charge a tipping fee for the wood but then mulch the wood and use it for composting, boiler fuel, or particle board feedstock (the last two items, boiler fuel and particle board feedstock, are driven by the local markets).

Enclosed as Schedule B-1 is a listing of various C&D recycling options within the H-GAC region. The project team contacted all of the listed parties and verified that they collected the materials listed on the schedule, confirmed their prices, etc.<sup>5</sup>

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<sup>5</sup> Recycle Texas, A Directory of Recycling Companies, TNRCC (GI-224), November 1996.

## H-GAC Illegal Dumping Study

### Construction & Demolition Recycling Option Matrix

<u>Company</u>	<u>City/State</u>	<u>Phone Number</u>	<u>Address</u>	<u>Materials Accepted</u>	<u>Collector</u>	<u>Separated or Commingled</u>	<u>Costs</u>	<u>Distance From Conroe</u>
◆ Garden-Ville Horticultural Products	San Antonio, TX	(210) 661-5180	7800 IH 10 East 78219	Sheet Rock	No	Separated	Variable	170 Miles
◆ Southern Crushed Concrete-Chrisman	Houston, TX	(281) 987-8789	14329 Chrisman 77039	Concrete and Brick	No	Separated	\$0 - Concrete \$25 / Dumptruck -Brick	30 Miles
◆ Southern Crushed Concrete-Gasmer	Houston, TX	(281) 987-8789	14329 Chrisman 77040	Concrete and Brick	No	Separated	\$0 - Concrete \$25 / Dumptruck -Brick	60 Miles
◆ Transamerican Waste of Houston, Inc.	Houston, TX	(713) 849-3061	10554 Tanner Rd. 77041	Concrete, Brick, Asphalt Shingles, Cedar Shingles Slate Shingles, Tile Shingles Scrap Lumber and Sheet Rock	Yes	Separated	\$3.00 / Yard + Transportation(1)	10 Miles
◆ Transwaste, Inc.	Alexandria, LA	(318) 448-9752	P.O. Box 11826 71315	Concrete, Brick, Asphalt Shingles, Cedar Shingles Slate Shingles, Tile Shingles Scrap Lumber and Sheet Rock	No	Commingled	\$26.95 Per Ton	270 Miles
◆ Verner Material & Equipment Company	Freeport, TX	(409) 233-3366	P.O. Box 967 Clute 77531	Concrete and Brick	No	Commingled	\$5-\$70 Per Ton (2)	60 Miles
◆ Waste Reduction Systems (WRS)	Angleton, TX	(281) 922-0634 (281) 922-1000	100 Genoa-Redbluff Rd. 77038	Scrap Lumber	No	Separated	\$3.50 / Yard	25 Miles(3)

**Notes:**

(1) Transportation fee varies and is based on the distance traveled, size of the load and material content.

(2) Fee varies due to clay and sand concentration within materials.

(3) Northwest drop site.

## **Appendix C**

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Harris County Environmental Enforcement Division - Background

## **HARRIS COUNTY PRECINCT THREE ENVIRONMENTAL ENFORCEMENT DIVISION**

Harris County Precinct Three's Environmental Enforcement Division was created in May 1993 to respond countywide to the problem of illegal dumping of solid waste in the unincorporated areas of Harris County. It is currently staffed with five (5) certified peace officers from a centrally-located constable's office and assigned to the precinct.

The duty of these officers is:

- to actively work to prevent the illegal dumping of solid and special wastes
- to bring violators into compliance or justice
- to educate the public about the hazards of illegal dumping, how to properly dispose of solid waste and household hazardous wastes, and how to report illegal dumping
- to enforce the State of Texas's laws pertaining to the illegal disposal of solid waste

The division is focused on traditional enforcement. Enforcement is targeted at identifying, categorizing, and properly responding to dump sites, abandoned barrels, and related environmental concerns. Two are HAZWOPER (Hazardous Waste Operations and Emergency Response) certified and the others are will be trained. The officers are on call 24 hours a day and the EED maintains a 24-hour emergency response line for citizens to report violations. Investigators are immediately notified by the system. Officers have the authority to issue citations to a violator or to arrest those participating in the act of illegal dumping. Cases are also referred to the EED by regular patrol deputies in the Harris County Sheriff's Department and the various Constables' Precincts.

The EED works closely with the Harris County Pollution Control Department, the Harris County Attorney's Office, and the District Attorney's Office, to provide coordinated criminal investigation. An interlocal agreement with the City of Houston also permits the EED to coordinate efforts and investigate cases within the municipal boundaries.

As of November 1997, the number of cases filed with the EED since September 1993:

- 1,108 total cases investigated
- 1,121 cases closed
- 283 criminal charges filed
- 944 offenders/sites brought into compliance

The EED's proactive education program includes adult and children's versions of STOP (Stop Trashing Our Precinct) brochures developed in cooperation with a local elementary school, which won first place at the State's Community Problem Solving Competition in 1993. A grant-supported, professionally produced videotape on the dangers and consequences of illegal dumping was also produced.

The estimated cost of the program is \$275,000+. This includes salaries, benefits, vehicles, film/processing, uniforms, equipment, printing.

## Attachments

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Memorandum: Legislative Changes Affecting Enforcement Actions, 1/7/97.....Attachment 1

### Pleadings: Civil Cases

Plaintiff's Original Petition And Application For Temporary Injunction.....Attachment 2

Show Cause Order.....Attachment 3

Agreed Temporary Injunction.....Attachment 4

Plaintiff's First Request For Production.....Attachment 5

Plaintiff's First Set of Interrogatories.....Attachment 6

Agreed Final Judgment And Permanent Injunction.....Attachment 7

### Pleadings: Criminal Cases

Chapter 365 Texas Litter Abatement Act.....Attachment 8

Illegal Dumping Filings.....Attachment 9

Illegal Dumping: Dallas Morning News, 8/11/97.....Attachment 10

Cost For Type IV Landfills For Montgomery County.....Attachment 10

Dallas City Ordinance No. 22120.....Attachment 12

Documents Reviewed.....Attachment 13

Interviews.....Attachment 14



MICHAEL P. FLEMING  
County Attorney  
Harris County, Texas

MEMORANDUM

To: David Yanke  
Reed - Stowe & Company

From: Cathy Sisk  
Bureau Chief, Environmental and Community Protection

Re: Legislative Changes Affecting Enforcement Actions

Date: October 7, 1997

Prosecutors using the pleadings in *Harris County and the State of Texas v. Warren Clayton Fry et al.*, as a guide in drafting their own civil enforcement pleadings need to be aware of some of the changes that occurred in the 1997 legislative session. During this past session the legislature adopted Senate Bill 1876, which consolidated all of the enforcement and emergency-action provisions from the major environmental statutes into several chapters of the Texas Water Code. The Water Code contains the general organizational and procedural provisions governing the Texas Natural Resource Conservation Commission.

The new enforcement provisions apply only to violations occurring after September 1, 1997. Violations occurring prior to September 1, 1997 are governed by the law in effect at the time they occurred. The most important provisions for county attorneys, city attorneys and district attorneys are contained in new Chapter 7 of the Water Code, entitled "Enforcement."

The enforcement sections of the Solid Waste Disposal Act (Chapter 361 of the Texas Health and Safety Code) cited in the *Warren Clayton Fry* pleadings may now be found in Chapter 7 of the Texas Water Code, as follows:

<u>Health and Safety Code Cite</u>	<u>Subject Matter</u>	<u>Water Code Cite</u>
§ 361.229	State as Necessary and Indispensable Party	§ 7.353
§§ 361.225, 361.227	Venue	§§ 7.351 and 7.105(c)

§ 361.223	Cause, suffer, allow or permit violations	§ 7.102
§ 361.225	Suit by local government	§ 7.351
§ 361.223	Penalty amounts	§ 7.102

For violations occurring prior to September 1, 1997 and continuing after that date, both of the relevant sections should be cited.

For the most part, Senate Bill 1876 involved no substantive changes in the law. Indeed that was its sponsors' stated intent. Nevertheless, some changes occurred. Although they were probably inadvertent, they are not insignificant. They include:

(1) The amount of the minimum civil penalty. The minimum penalty under the Solid Waste Disposal Act was \$100.00 per act and day for solid waste violations. Under § 7.102, the minimum has been reduced to \$50.00, which was the minimum penalty for water quality violations under § 26.122 of the Water Code.

(2) Attorneys fees. Local governments were formerly entitled to recover attorneys fees in civil enforcement actions under the Solid Waste Disposal Act. That provision was inadvertently removed from the consolidated chapter.

(3) Publishing the terms of the judgment. Under prior law, only in certain cases was the attorney general required to publish the terms of the judgment and await comments from the public prior to submitting the judgment to the court for signature and entry. These provisions now apply to most environmental enforcement actions, including those under the Solid Waste Disposal Act.

The local government attorneys with whom you are working should feel free to contact any of the environmental attorneys in our office for assistance. Our number is 713-755-8282. The attorneys in the Natural Resources Division of the Office of the Attorney General are always ready to assist as well. The AG's number is 512-463-2012.

88-14612

No. \_\_\_\_\_

HARRIS COUNTY, TEXAS  
Plaintiff

and the

STATE OF TEXAS  
acting by and through the  
Texas Natural Resources  
Conservation Commission, a  
Necessary and Indispensable  
Party

v.

WARREN CLAYTON FRY and  
ELIZABETH ANN BURT, as  
co-trustees of the Warren  
Clifford Fry Trust; WARREN  
CLAYTON FRY, individually;  
CONNIE CONKLIN BROUSSARD  
Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152 JUDICIAL DISTRICT**PLAINTIFF'S ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY INJUNCTION**

Harris County, Texas, plaintiff, by and through Harris County Attorney Mike Driscoll, files plaintiff's original petition requesting a temporary injunction and civil penalties, and would respectfully show the Court the following:

**1. PARTIES**

1.1 Plaintiff Harris County, Texas is a political subdivision of the State of Texas and is authorized to bring this action pursuant to two (2) orders of the Harris County Commissioners' Court, passed at a duly convened meeting of Commissioners' Court on February 13, 1996. These orders are attached as Exhibits "A" and "B".

1.2 The State of Texas is a necessary and indispensable party to this suit.<sup>1</sup> Service on the State is not necessary at this time.

1.3 Defendant Warren Clayton Fry is an individual residing at 20210 Pittsford Drive, Katy, Harris County, Texas, and may be served with process at that address. Defendant, as co-trustee of the

<sup>1</sup> Tex. Health & Safety Code Ann. §361.009 (Version 1992 & Supp. 1996)

Warren Clifford Fry Family Trust, is the record owner of the property at which the violations occurred. Defendant, in his individual capacity, is doing business at the property at which the violations occurred under the assumed name of Katy Tree Farms.

1.4 Defendant Elizabeth Ann Burt is an individual residing at 1247 F.M. 359, Richmond, Fort Bend County, Texas, 77469 and may be served with process at that address. Defendant, as co-trustee of the Warren Clifford Fry Family Trust, is the record owner of the property at which the violations occurred.

1.5 Defendant Connie Conklin Broussard is an individual residing at 20210 Pittsford Drive, Katy, Harris County, Texas, and may be served with process at that address. Defendant, in her individual capacity, is doing business at the property at which the violations occurred under the assumed name of Katy Tree Farms.

## 2. JURISDICTION & VENUE

2.1 This is a suit for an injunction and civil penalties pursuant to the Solid Waste Disposal Act and the Regulations of Harris County, Texas for Flood Plain Management ("Flood Plain Regulations"). The Court has jurisdiction over this case and venue is proper in Harris County, Texas, because Harris County is the county in which all violations occurred.<sup>2</sup>

## 3. AUTHORITY

### Harris County Flood Plain Regulations

3.1 On or about September 6, 1973, Harris County, pursuant to legislative authority now codified at Tex. Loc. Gov't Code Ann. §240.901 (Vernon 1988 & Supp. 1995) and Tex. Water Code Ann. §16.311-§16.319 (Vernon 1988) adopted the "Regulations of Harris County, Texas for Flood Plain Management". These Flood Plain Regulations were adopted so the residents of Harris County may qualify for federal flood insurance pursuant to the National Flood Insurance Act of 1968, as amended. The Flood Plain Regulations became effective on October 6, 1973 and have been in effect, with subsequent revisions, since that date. The Flood Plain Regulations authorize the Office of the Harris

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<sup>2</sup> Tex. Health & Safety Code Ann. §361.225 (Vernon 1992 & Supp. 1996); Tex. Health & Safety Code Ann. §361.227 (Vernon 1992)

County Attorney to enforce the Regulations by filing suit to enjoin violations (§7.01 of the Regulations).

3.2 At all times material to this suit, the Flood Plain Regulations have prohibited any development within the unincorporated areas of Harris County without first securing a permit from the Harris County Engineer (§4.01 of the Regulations). The Regulations define "development", in §2.07, as "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations."

#### Solid Waste Disposal Act

3.3 The Texas Solid Waste Disposal Act prohibits any person from causing, suffering, allowing, or permitting the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility to store, process, or dispose of solid waste in violation of the Act or a rule, permit, license, or other order of the Texas Natural Resource Conservation Commission (TNRCC).<sup>3</sup> The purpose of the Act is to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid wastes.<sup>4</sup> Section 361.024 of the Act authorizes the Texas Natural Resource Conservation Commission to adopt and promulgate rules consistent with the Act and to establish "minimum standards of operation" for management and control of solid wastes over which it has jurisdiction. Pursuant to that authority, the TNRCC has promulgated regulations governing, among other things, the disposal of municipal solid waste. These regulations have been codified at 30 Texas Administrative Code §330.1 *et seq.* 30 TAC §330.4 provides that no municipal solid waste site shall be operated without a permit.

3.4 The Solid Waste Disposal Act authorizes Harris County to file suit for civil penalties and injunctive relief against any person who violates a provision of the Act or the Texas Natural Resource Conservation Commission rules or orders issued pursuant to the Act.<sup>5</sup>

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<sup>3</sup> Tex. Health & Safety Code Ann. §361.022 (Venom 1992 & Supp. 1996).

<sup>4</sup> Tex. Health & Safety Code Ann. §361.002 (Venom 1992).

<sup>5</sup> Tex. Health & Safety Code Ann. §361.025 (Venom 1992 & Supp. 1996).

#### 4. VIOLATIONS OF THE SOLID WASTE DISPOSAL ACT

4.1 Harris County brings suit to enjoin the illegal collection, storage, and disposal of solid waste at 20220 Morton Road in Harris County, Texas (the "Site"). Defendants have caused, suffered, allowed or permitted the collection, storage, handling, processing, or disposal of solid waste at this site in violation of the Solid Waste Disposal Act.

4.2 Warren Clayton Fry is operating a municipal solid waste site without a permit at 20220 Morton Road, Katy, Harris County, Texas, a parcel of land more specifically described as:

A 45.85 acre tract of land in the H.&T.C.R.R. Company Survey, Abstract No. 437, Harris County, Texas and being a tract of land conveyed to Warren Clayton Fry, et al, as co-trustees as described in a deed recorded under County Clerk's file number L710911, executed June 1, 1988, and being more particularly described in the attached Exhibit "C".

4.3 The conditions in violation must be abated as the contamination at the site degrades the land and water quality of Harris County and Texas and threatens the health and safety of the citizens of Harris County and Texas.

4.4 The site is located in the Buffalo Bayou watershed. Solid waste buried on the property is subject to free exchange with surface water. Decomposition of demolition debris and other solid waste at the site is introducing contaminants into the soil, surface water, and the adjacent waters of the State, degrading surface water and the Buffalo Bayou watershed.

4.5 On January 23, 1992, in response to citizen reports of illegal solid waste dumping at a property located at 20220 Morton Ranch Road, an investigator from the Harris County Pollution Control Department ("HCPCD") inspected the facility at that location. The investigator observed and photographed a large pile of municipal solid waste (including carpet, carpet pads, lumber, paper products, metal and plastic pails, tree stumps, sheet plastic, and demolition materials) at the subject property.<sup>6</sup> Pursuant to a Notice of Violation dated February 7, 1992, Warren Clayton Fry was notified by HCPCD that these conditions violate the Texas Solid Waste Disposal Act in that solid

<sup>6</sup> 30 TAC §200.2 contains the following solid waste definition:

"Municipal Solid Waste" Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and all other solid waste other than industrial solid waste.

waste may not be collected, stored, handled, transported, processed or disposed of without a permit or other authorization from the TNRCC.<sup>7</sup> The TNRCC has not issued a permit or any other authorization for this facility to collect, store, handle, transport, process or dispose of solid waste. See Exhibit "D", which is incorporated herein.

4.6 Pursuant to that same notice of violation, Warren Clayton Fry was further notified that in order to bring the site into compliance with the Texas Health and Safety Code, all municipal solid waste would have to be removed from the site and transported to an authorized disposal facility. The notice also stated that civil penalties could be assessed for each act and day of the continuing violations.

4.7 Since January 23, 1992, investigators from the Harris County Pollution Control Department have continued to inspect the site. At least 12 additional notices of violation have been issued to Warren Clayton Fry, informing him that violations of the Solid Waste Disposal Act were occurring and warning him that substantial penalties could result if violations of the Act continued.

## 5. VIOLATIONS OF THE HARRIS COUNTY FLOOD PLAIN REGULATIONS

5.1 Defendants are violating Section 4.01 of the Flood Plain Regulations of Harris County in that fill material was placed at 20220 Morton Road without securing the proper permits from the Harris County Engineer.

5.2 On May 9, 1995, an inspector from the Harris County Engineering Department inspected the facility at that location. The inspector observed a large pile of fill at the subject property. Pursuant to a Notice of Violation dated May 9, 1995, Warren Clayton Fry was notified by the Harris County Engineering Department that these conditions violate the Regulations of Harris County for Flood Plain Management in that fill material cannot be placed on site without the required County permit.

5.3 Since May 9, 1995, inspectors from the Harris County Engineering Department have continued to inspect the site. At least one additional notice of violation and one warning letter have been issued to Warren Clayton Fry, informing him that violations of the Flood Plain Regulations were occurring and warning him that he must obtain a permit.

<sup>7</sup> Tex. Health & Safety Code Ann. §161.223(a) (Version 1997 & 8-1-1996, as amended).

## 6. CIVIL PENALTIES

6.1 The Solid Waste Disposal Act provides for civil penalties of not less than \$100.00 to a maximum of \$25,000 for each act of violation and each day a violation of the Act (or the rules, permits, licenses or other orders of the TNRCC) occurs.<sup>8</sup>

6.2 Civil penalties of not less than \$100.00 nor more than \$25,000 for each act of violation and for each day of violation should be assessed against Warren Clayton Fry, in his individual capacity and as co-trustee of the Warren Clifford Fry Trust; Elizabeth Ann Burt as co-trustee of the Warren Clifford Fry Trust; and Connie Conklin Broussard, in his individual capacity, for violations of the Texas Solid Waste Disposal Act and the rules of the TNRCC. The illegal landfill has been operated continuously in violation of the Act from January 23, 1992 until the present, and each day of this period is a separate violation of the Act.

## 7. INJUNCTIVE RELIEF

7.1 The site constitutes a hazard to the public health in its present condition and must be brought into compliance with the law.

7.2 Based upon defendants' continued course of conduct in violation of the law, plaintiff seeks temporary injunctive relief to restrain the individual defendants, their officers, agents, employees, successors, and assigns, from any future violations of the Texas Solid Waste Disposal Act and the Flood Plain Regulations of Harris County, Texas as follows:

(a) the defendants should be ordered to cease causing, suffering, allowing, or permitting the receipt of fill and solid waste at the Site; and

(b) the defendants should be ordered to erect barriers sufficient to prevent vehicular access to the site; and

(c) the defendants should be ordered to erect signs at least every 50 feet along the vehicular access way at the site stating "NO DUMPING-STATE LAW"; and

(d) the defendants should be ordered to hire an independent environmental consultant to conduct a thorough assessment of the site.

(e) the defendants should be ordered to submit to the TNRCC and HCPCD a proposed clean-up plan to address removal of all solid waste on the site (both surface and subsurface) within 30 days of granting of the temporary injunction requested herein.

7.3 After final trial of this case, plaintiff requests the Court to grant permanent injunctive relief as follows:

(a) the defendants should be ordered to permanently cease causing, suffering, allowing, or permitting, the receipt of solid waste at the Site;

(b) the defendants should be ordered to remove all of the solid waste at the Site and make proper arrangements for the disposal of all solid waste (both surface and subsurface) in accordance with a proposed cleanup plan as approved by the Texas Natural Resource Conservation Commission.

7.4 No bond is required of the County prior to the granting of an injunction.

#### **PRAYER**


For these reasons, plaintiff Harris County, Texas prays for the following:

1. that this Court issue a show cause order requiring defendants to appear before the court to show why they should not be enjoined from continuing violation of the Solid Waste Disposal Act and Harris County Flood Plain Regulations;
2. that citation issue in due form of law against defendants;
3. that upon failure by the defendants to show cause why an injunction should not be issued, that the Court grant a temporary injunction against defendants, in favor of plaintiff, for the injunctive relief as aforesaid;
4. that at the show cause hearing, the Court set a date certain for trial for a permanent injunction in this cause. At trial, plaintiff will request that a permanent injunction issue to compel defendants to comply with the Solid Waste Disposal Act and the Regulations of Harris County for Flood Plain Management and enter judgment against defendants for costs of court;
5. that the Court order the permanent injunction run with the land and be filed in the deed records of the Harris County Clerk's Office, against the defendants, their agents, successors and assigns, to

- restrain them from any current and future violations of the Texas Solid Waste Disposal Act and the rules and regulations promulgated in association with the Texas Solid Waste Disposal Act.; and
6. that civil penalties be assessed against defendants, jointly and severally, for each act in violation of the Health and Safety Code and for each day the violations are found to have occurred; and
7. that the Court grant plaintiff reasonable attorney fees, costs and expenses incurred in connection with this action; and
8. grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

MIKE DRISCOLL 99999939  
Harris County Attorney

By:   
Clarissa Kay Bauer  
Senior Assistant County Attorney  
Environmental Division  
1001 Preston #634  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-8772

For plaintiff, Harris County, Texas

VERIFICATION

THE STATE OF TEXAS

COUNTY OF HARRIS

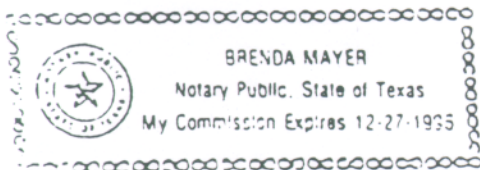
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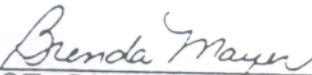
BEFORE ME, the undersigned authority, on this day personally appeared PATRICK E. PENDLETON, who swore on oath the following:

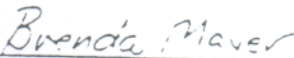
1. I am over 18 years of age. I have never been convicted of a crime, and I am competent to make this affidavit.
2. I am the solid waste supervisor for the Harris County Pollution Control Department.
3. My position requires me to routinely inspect solid waste sites for compliance with the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. ch. 361, and regulations of the Texas Natural Resource Conservation Commission.
4. I have inspected the solid waste site location at 20220 Morton Road, in Harris County, Texas.
5. I have read the foregoing petition, and have personal knowledge of the facts alleged in paragraphs 4.5 - 4.7 which pertain to the above-referenced site. Those facts are true and correct.

  
PATRICK E. PENDLETON

SUBSCRIBED TO AND SWORN TO BEFORE ME, on this the 20th day of March, 1996, to certify which witness my hand and seal of office.



  
NOTARY PUBLIC in and for the  
State of T E X A S

  
(Type or Print Name)

My commission expires: 12/27/96

VERIFICATION

THE STATE OF TEXAS

§  
§  
§

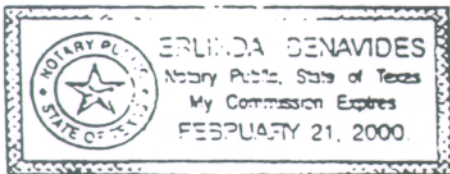
COUNTY OF HARRIS

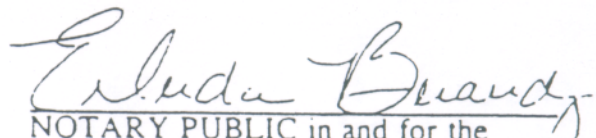
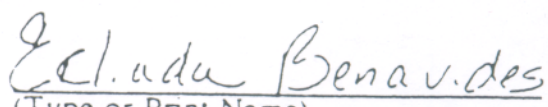
BEFORE ME, the undersigned authority, on this day personally appeared RAYMOND ANDERSON, who swore on oath the following:

1. I am over 18 years of age. I have never been convicted of a crime, and I am competent to make this affidavit.
2. I am the Compliance Manager for the Harris County Engineer's Office.
3. My position requires me to routinely monitor sites in Harris County, Texas for compliance with the "Regulations of Harris County, Texas for Flood Plain Management.
4. I have read the foregoing petition, and have personal knowledge of the facts alleged in paragraphs 5.1 - 5.3. Those facts are true and correct.

  
RAYMOND ANDERSON

SUBSCRIBED TO AND SWORN TO BEFORE ME, on this the 19<sup>th</sup> day of March, 1998 to certify which witness my hand and seal of office.



  
NOTARY PUBLIC in and for the  
State of TEXAS  
  
(Type or Print Name)

My commission expires: 2/21/00

ORDER AUTHORIZING COUNTY ATTORNEY TO FILE

SUIT AND AUTHORIZING EXPENSES

On this the 18th day of February, 1996, the Commissioners Court of Harris County, being duly convened at a regular meeting of the Court, upon motion of Commissioner Roback, seconded by Commissioner Evangelist, duly put and carried, adopted the following:

Whereas, the Harris County Pollution Control Department has conducted investigations at a location known as 20320 Morton Ranch Road, and has determined that a landfill is being operated at that location without a permit from the Texas Natural Resources Conservation Commission, in violation of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN. §361.001-361.210 (Violation 1992 & Supp. 1996), and certain state operational standards;

# EXHIBIT A

Whereas, Warren Clayton Fry and Elizabeth Ann Butt, as Co-Trustees of the Warren Clayton Fry and Elizabeth Ann Butt Family Trust, are the record owners of the property and Warren Clayton Fry and Connie Condit Butts are operating a business at that location;

Whereas, despite the issuance of numerous Harris County Pollution Control Notices of Violation, violations at the location continue; and

Whereas the Harris County Pollution Control Department has requested that the County Attorney take the necessary legal action to obtain an injunction ordering compliance, as well as to obtain civil penalties;

THEREFORE, IT IS ORDERED that the County Attorney be and is hereby authorized on behalf of Harris County, to file suit against Warren Clayton Fry and Elizabeth Ann Butt, as Co-Trustees of the Warren Clayton Fry and Elizabeth Ann Butt Family Trust, and against Warren Clayton Fry and Connie Condit Butts in their individual capacities, as well as any other person or entity that has caused, caused or permitted the offending activities, and any successor in title or interest to same, for the purposes and remedies and other relief, as is authorized by the Texas Solid Waste Disposal Act and other applicable laws relating to such violations; and

IT IS FURTHER ORDERED that the County Attorney be and is hereby authorized to prosecute the suit and to take such other and proper steps as may be necessary to enforce the same.

Date FEB 13 1996

EXHIBIT A

Recorded Vol \_\_\_\_\_ Page \_\_\_\_\_

ORDER AUTHORIZING COUNTY ATTORNEY TO FILE

SUIT AND AUTHORIZING EXPENSES

On this the 13<sup>th</sup> day of February, 1996, the Commissioners Court of Harris County, being duly convened at a regular meeting of the Court, upon motion of Commissioner Reback, seconded by Commissioner Evans, duly put and carried, adopted the following:

Whereas, the Harris County Pollution Control Department has conducted investigations at a location known as 20220 Morton Ranch Road, and has determined that a landfill is being operated at that location without a permit from the Texas Natural Resources Conservation Commission, in violation of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN. §361.001-361.510 (Vernon 1992 & Supp. 1996), and certain state operational standards;

Whereas, Warren Clayton Fry and Elizabeth Ann Burt, as co-trustees of the Warren Clifford Fry Family Trust, are the record owners of the property and Warren Clayton Fry and Connie Conklin Broussard are operating a business at that location;

Whereas, despite the issuance of numerous Harris County Pollution Control Notices of Violation, violations at the location continue; and

Whereas, the Harris County Pollution Control Department has requested that the County Attorney take the necessary legal action to obtain an injunction ordering compliance, as well as to obtain civil penalties;

THEREFORE, IT IS ORDERED that the County Attorney be and is hereby authorized, on behalf of Harris County, to file suit against Warren Clayton Fry and Elizabeth Ann Burt, as Co-Trustees of the Warren Clifford Fry Family Trust, and against Warren Clayton Fry and Connie Conklin Broussard in their individual capacities, as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities, and any successor in title or interest to same, for civil penalties and injunctive and other relief, as is authorized by the Texas Solid Waste Disposal Act and other environmental, public health and welfare protection laws.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney is authorized to join in such suit or suits any and all parties he deems proper to do any and all things reasonable and

necessary to compel compliance with the law, and to finally dispose of the suit in accordance with the law as he deems appropriate.

IT IS FURTHER ORDERED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$5,0000.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense.

All fund transfers necessary to accomplish the above are hereby ordered to be made.

All such costs and fees should be charged to the general fund.

# **EXHIBIT B**

EXHIBIT B

ORDER AUTHORIZING SUIT TO COMPEL COMPLIANCE WITH THE  
REGULATIONS OF HARRIS COUNTY, TEXAS FOR FLOOD PLAIN MANAGEMENT  
AND AUTHORIZING LITIGATION EXPENSES

On this the 13<sup>th</sup> day of February, 1996, the Commissioners Court of Harris County, being duly convened at a regular meeting of the Court, upon motion of Commissioner Redack, seconded by Commissioner Eversole, duly put and carried, adopted the following:

WHEREAS, on September 6, 1973, the Commissioners Court of Harris County adopted the "Regulations of Harris County, Texas, for Flood Plain Management" ("Regulations"), which have been amended from time to time; and

WHEREAS Section 7.01 of the Regulations provides that if any person violates any provision of the Regulations, the County Engineer shall notify the County Attorney and direct the County Attorney to take whatever action is necessary to remedy the violation, including but not limited to, filing suit to enjoin the violation; and

WHEREAS Section 4.01 of the Regulations state that all development within the unincorporated areas of Harris County without first securing a permit is prohibited. The County Engineer notified the County Attorney that Warren Clayton Fry and Elizabeth Ann Burt are violating these provisions of the Regulations in that Warren Clayton Fry and Elizabeth Ann Burt, as Co-Trustees of the Warren Clifford Fry Family Trust, own the property located at 20220 Morton Ranch Road, on which fill material was placed without securing the proper permits.

THEREFORE, IT IS ORDERED that the County Attorney is authorized pursuant to Section 7.01 of the Regulations to institute a suit on behalf of Harris County, Texas against Warren Clayton Fry and Elizabeth Ann Burt, as Co-Trustees of the Warren Clifford Fry Family Trust, and against Warren Clayton Fry in his individual capacity, as well as their successors and/or assigns, and/or any other person having an interest or claim in the property known as 20220 Morton Ranch Road, Harris County, Texas, being a certain parcel of land more fully described in the attached Exhibit A, and also to seek damages, if recoverable, for the failure and/or refusal of Possessor to obtain the necessary permit pursuant to the Regulations. The suit is to compel compliance with the Regulations by requiring Warren Clayton Fry and Elizabeth Ann

FREDERICK C. C.  
Commissioners Court

Elizabeth Ann Burt to remove the fill and for any other relief provided for in the Regulations and other laws, rules, regulations and orders of the State of Texas and the United States of America.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney is authorized to join in such suit or suits any and all parties he deems proper, to do any and all things reasonable and necessary to require compliance with the law, and to finally dispose of the suit in accordance with the law as he deems appropriate.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$500.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense.

All fund transfers necessary to accomplish the above are hereby ordered to be made.

All such costs and fees should be charged to the general fund.

119-67-1164

EXHIBIT "A"

To Deed from Emma Lee Fry, Individually and as Executor of the Estate of Warren Clifford Fry, Deceased, to Warren Clayton Fry and Elizabeth Ann Burt as Co-Trustees of the Warren Clifford Fry Family Trust

BEGLINING at a gas pipe, the northwest corner of the J. Clifford Survey, and the west southern southwest corner of the lands and premises set aside and decreed to Charles D. Fry, in cause No. 172408, entitled Ivra A. Fry et al vs. Roy C. Fry et al, by decree of the 55th Judicial District Court of Harris County, Texas, recorded in Vol. 29, page 99, Minutes of said Court and to which reference is here made for all purposes; and which is also the beginning point of the heretofore described 137.56 acres of land;

THENCE north along the west line of said Charles D. Fry tract, 40 feet to an interior corner thereof,

THENCE west along the south line of said Charles D. Fry tract, parallel to and 40 feet distant from the south line of said John Fry 292-6/100 acre tract, 236-601/1000 varas to the southwest corner of said Charles D. Fry tract,

THENCE north along the west line of said tract, decreed to the said Charles D. Fry, 959-62/100 varas to the north line of said John Fry 292-6/100 acre tract and the north-west corner of said Charles D. Fry tract,

THENCE west along the north line of said John Fry 292-6/100 acre tract a sufficient distance so that a line drawn south therefrom to the most northern south line of the John Fry original 292-6/100 acre tract and the north line of the Oliver Fry tract and thence East along this line to the place of beginning will contain exactly 45.55 acres of land.

RECORDED IN BOOK 100 PAGE 100  
 INDEXED IN BOOK 100 PAGE 100  
 THE STATE OF TEXAS  
 COUNTY OF HARRIS

NOTED FOR RECORD IN BOOK 100 PAGE 100  
 THE STATE OF TEXAS  
 COUNTY OF HARRIS

JUN 15 1998



County Clerk  
 HARRIS COUNTY, TEXAS

# **EXHIBIT C**

EXHIBIT C

L710911

119-57-1162

WARRANTY DEED

06/15/88 00707667 L710911 1 1.10

THE STATE OF TEXAS

COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

7  
X

THAT I, EMMA LEE FRY, Individually, and as Executor of the Estate of Warren Clifford Fry, Deceased, of Walker County, Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and the further consideration of the settlement and division of the Estate of Warren Clifford Fry, Deceased, the receipt of which is hereby acknowledged, have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY unto WARREN CLAYTON FRY and ELIZABETH ANN BURT, as Co-Trustees of the WARREN CLIFFORD FRY FAMILY TRUST under the Last Will and Testament of Warren Clifford Fry as found in the Probate Records of Harris County, Texas, under Probate Number 215,590, whose address is 108 Pine Valley, Huntsville, Walker County, Texas, all of the following described property in Harris County, Texas:

That certain 45.85 acre tract of land in the J. Clifford Survey, Harris County, Texas, more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the hereinabove described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantees, their successors and assigns forever, and Grantor does hereby bind herself, her heirs, executors and administrators, to Warrant and Forever Defend all and singular the said premises unto the said Grantees, their successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part hereof.

WITNESS my hand this 1st day of June, 1988.

Emma Lee Fry  
EMMA LEE FRY

FILED FOR RECORD  
8:30 A.M.

JUN 15 1988

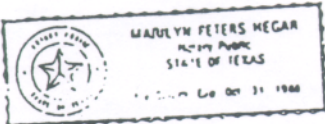
John A. [Signature]  
County Clerk, Harris County, Texas

119-67-1163

THE STATE OF TEXAS     6

COUNTY OF WALKER     6

This instrument was acknowledged before me on the 13<sup>th</sup> day of  
June, 1988, by EMMA LEE FRY.



SEAL

Marilyn Peters Hegar  
Notary Public, State of Texas

Printed Name of Notary:

My commission expires: \_\_\_\_\_

RECORDS SEARCH AFFIDAVIT

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who being by me duly sworn, deposed as follows:

My name is \_\_\_\_\_, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am a records keeper with the Texas Natural Resource Conservation Commission's Municipal Solid Waste Permit Section. I am responsible for maintaining a record of applications that the Texas Natural Resource Conservation Commission receives for permits in the area of municipal solid waste.

# EXHIBIT D

A record of each application for a permit to dispose of solid waste is kept by the Texas Natural Resource Conservation Commission ("NRCC" or "Commission") by an employee or representative of the Municipal Solid Waste Permit Section. With knowledge of the application to make a record of the receipt by entering the fact of receipt into a logging system at or near the time of receipt, or reasonably soon thereafter.

I have thoroughly searched the Commission's municipal solid waste permit section files for an order of authorization issued to "Warren Clayton Filkay-Tee Farms" for a municipal solid waste permit. As of March 12, 1992, there is no entry in the Commission's municipal solid waste permit section file system to indicate that the Texas Natural Resource Conservation Commission has issued such a permit.

\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on the 12th day of March, 1992.

My Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of Texas  
\_\_\_\_\_  
Notary Public for the State of Texas

RECORDS SEARCH AFFIDAVIT

Before me, the undersigned authority, personally appeared -  
Jean Doyle, who being by me dully sworn, deposed as  
follows:

My name is Jean Doyle, I am of sound mind, capable  
of making this affidavit, and personally acquainted with the facts  
herein stated:

I am a records keeper with the Texas Natural Resource Conservation  
Commission's Municipal Solid Waste Permits Section. I am  
responsible for maintaining a record of applications that the Texas  
Natural Resource Conservation Commission receives for permits in  
the area of municipal solid waste.

A record of each application for a permit in the area of municipal  
solid waste is kept by the Municipal Solid Waste Permits Section in  
the regular course of business of the Texas Natural Resource  
Conservation Commission ("TNRCC" or "Commission") by an employee or  
representative of the Municipal Solid Waste Permits Section, with  
knowledge of the application to make a record of the receipt by  
entering the fact of receipt into a logging system at or near the  
time of receipt, or reasonably soon thereafter.

I have thoroughly searched the Commission's municipal solid waste  
permits section files for an order of authorization issued to  
"Warren Clayton Fri/Katy Tree Farms" for a municipal solid waste  
permit. As of March 12, 1996, there is no entry in the  
Commission's municipal solid waste permit section file system to  
indicate that the Texas Natural Resource Conservation Commission  
has issued such a permit.

Jean Doyle  
Affiant

SWORN TO AND SUBSCRIBED before me on the 12<sup>th</sup> day of March,  
1996.

My Commission expires

11-02-97

J & Claus  
Notary Public, State of Texas  
CHELL & CLAUS  
Notary's Printed Name

No. 98-11817HARRIS COUNTY, TEXAS  
Plaintiff

and the

STATE OF TEXAS  
acting by and through the  
Texas Natural Resources  
Conservation Commission, a  
Necessary and Indispensable  
Party

v.

WARREN CLAYTON FRY and  
ELIZABETH ANN BURT, as  
co-trustees of the Warren  
Clifford Fry Family Trust;  
WARREN CLAYTON FRY,  
individually;  
CONNIE CONKLIN BROUSSARD  
Defendants

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

152 JUDICIAL DISTRICTSHOW CAUSE ORDER

Harris County, Texas, by and through the Harris County Attorney's Office, filed Plaintiff's Original Petition and Application for Temporary Injunction wherein a hearing is requested by Plaintiff prior to the issuance of any injunction.

The Court is of the opinion that the request is reasonable and necessary and ORDERS that Defendants Warren Clayton Fry, individually and as co-trustee of the Warren Clifford Fry Family Trust; Elizabeth Ann Burt, as co-trustee of the Warren Clifford Fry Family Trust; and Connie Conklin Broussard, upon service of the Petition, present themselves before the Ancillary Court at 9:00 AM on the 24th day of April, 1996, to show cause why a temporary injunction pursuant to Plaintiff's petition should not issue against them.

The Ancillary Court is located on the First Floor of 301 Fannin St., Houston Texas, 77002.

SIGNED the 21 day of March, 1996.

  
JUDGE PRESIDING

APPROVED AND ENTRY REQUESTED:

MIKE DRISCOLL, 99999939  
County Attorney  
Clarissa Kay Bauer  
Senior Assistant County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002  
Phone (713) 755-8282

No. 96-14612

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Natural Resources</b>	§	
<b>Conservation Commission, a</b>	§	
<b>Necessary and Indispensable</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>WARREN CLAYTON FRY and</b>	§	
<b>ELIZABETH ANN BURT, as</b>	§	
<b>co-trustees of the Warren</b>	§	
<b>Clifford Fry Trust; WARREN</b>	§	<b>JUDICIAL DISTRICT</b>
<b>CLAYTON FRY, individually;</b>	§	
<b>CONNIE CONKLIN BROUSSARD</b>	§	
<b>Defendants</b>	§	

**AGREED TEMPORARY INJUNCTION**

On April 24, 1996, plaintiff, Harris County, Texas', application for temporary injunction was set for hearing. The Court finds that the parties have reached an agreement, which is evidenced by their signatures below.

After reviewing the pleadings and considering the agreement of the parties, the Court finds and concludes that the Agreed Temporary Injunction should be granted and defendants, Warren Clayton Fry and Elizabeth Ann Burt, their agents, servants, and employees must immediately begin to do all things necessary to abate the violation of the Texas Solid Waste Disposal Act and the Regulations of Harris County Texas for Flood Plain Management at the certain parcel of land described as a 45.85 acre tract of land in the H.&T.C.R.R. Company Survey, Abstract No. 437, Harris County, Texas and being a tract of land conveyed to Warren Clayton Fry, et al, as co-trustees as described in a deed recorded under County Clerk's file number L710911, executed June 1, 1988, and being more particularly described in the attached exhibit "A", which is incorporated herein for all purposes. The property is also known as 20220 Morton Road.

In agreeing to this temporary injunction, the parties hereby stipulate the following:

That plaintiff, Harris County, Texas is duly authorized to bring this cause of action pursuant to its Regulations of Harris County, Texas for Flood Plain Management and the Texas Solid Waste Disposal Act.

That defendants Warren Clayton Fry and Elizabeth Ann Burt, as co-trustees of the Warren Clifford Fry Family Trust, own the real property known as 20220 Morton Road, described above.

That the property known as 20220 Morton Road is located within the unincorporated area of Harris County.

That this agreed temporary injunction complies with all of the statutory, jurisdictional and procedural requisites necessary for entry and enforcement.

That all parties agree to the terms of this agreed temporary injunction and waive the right to appeal its validity.

That Harris County, Texas does not waive its right to demand additional enforcement of the "Regulations of Harris County Texas for Flood Plain Management" or take any other action against the defendant to enforce the laws and regulations of Harris County, the State of Texas or the United States.

That all parties agree that they actively participated in the negotiations leading up to this agreed temporary injunction; they understand the duties placed upon them by it; have read the terms of this agreed injunction; and that this agreed injunction is specific in its terms and complies with Rule 683 of the Texas Rules of Civil Procedure, and they understand its terms.

That defendants are willing and able to comply with the terms of this agreed temporary injunction and waive issuance and service of a writ of injunction pursuant to the requirements under Rule 689 of the Texas Rules of Civil Procedure.

That this agreed temporary injunction is enforceable pursuant to Rule 692 of the Texas Rules of Civil Procedure.

Warren Clayton Fry and Elizabeth Ann Burt agree that they will:

1. On or before June 22, 1996, obtain a permit from the Harris County Engineer's Department for any excavation occurring at 20220 Morton Road. Defendants understand that it is the responsibility of the defendants to ensure that a complete application is submitted to the Permit Division of the Harris County Engineer and that all approvals from the Harris County Flood Control District and the Harris County Engineering Department are submitted in a timely manner to ensure compliance with the terms of the injunction set out below.

2. Defendants shall pay all permit fees in full, including any penalty for the failure to acquire a permit prior to development as required by the "Regulations of Harris County Texas for Flood Plain Management."

3. Defendants have excavated five verification pits to determine the quantity and extent of solid waste buried on the property. The defendants previously agreed to hire an environmental professional to assist in the evaluation and clean-up of the property. In exchange for the defendants excavating an additional five verification pits, Harris County Pollution Control and the State agree that the defendants are not required to hire an environmental professional. Instead, the Defendants agree to excavate five (5) additional verification pits in the centrally-located backfilled sand mine at 20220 Morton Road by excavating five new verification pits with a backhoe. The locations of the five new verification pits will be provided to Warren Clayton Fry by the employees of the Harris County Pollution Control Department no later than July \_\_\_, 1996. Defendants must begin excavation of the pits no later than July \_\_\_, 1996. Defendant must complete excavation of the pits within 5 days from the start of excavation.

4. Defendants shall dig each verification pit to a size which will allow the bottom of the pit to extend to a depth of 25 feet below the surface of the landfill and which will have a bottom area with a minimum size of 2 feet wide by 12 feet long.

5. Defendants shall allow employees of the Harris County Pollution Control Department, the County Engineer's Office, and the Texas Natural Resources Conservation Commission to monitor the excavation of the five verification pits. Following the excavation of the pits, the excavated material will be inspected by employees of the Harris County Pollution Control Department. Defendants shall notify Clarissa Kay Bauer, Senior Assistant County Attorney, and Liz Bills, Assistant Attorney General, at least 48 hours before the start of excavation.

6. Defendants shall immediately stop accepting fill material at 20220 Morton Road unless they first obtain a permit from the County Engineer's Office.

It is therefore ORDERED that plaintiff's application for temporary injunction is granted and defendants Warren Clayton Fry and Elizabeth Ann Burt, their agents, servants and employees, are hereby immediately mandatorily enjoined as follows:

1. On or before June 22, 1996, Defendants must obtain a permit from the Harris County Engineer's Department for any excavation occurring at 20220 Morton Road.

2. Defendants shall determine the quantity and extent of solid waste buried in the centrally-located backfilled sand mine at 20220 Morton Road by excavating five additional verification pits with a backhoe. The locations of the five new verification pits will be provided to Warren Clayton Fry by the employees of the Harris County Pollution Control Department no later than July \_\_\_, 1996. Defendants must begin excavation of the pits no later than July \_\_\_, 1996. Defendant must complete excavation of the pits within 5 days from the start of excavation.

3. Defendants must dig each verification pit to a size which will allow the bottom of the pit to extend to a depth of 25 feet below the surface of the landfill and which will have a bottom area with a minimum size of 2 feet wide by 12 feet long.

4. Defendants must allow employees of the Harris County Pollution Control Department, the County Engineer's Office, and the Texas Natural Resources Conservation Commission to monitor the excavation of the five verification pits. Defendants must notify Clarissa Kay Bauer, Senior Assistant County Attorney, and Liz Bills, Assistant Attorney General, at least 48 hours before the start of excavation.

5. Defendants must immediately stop accepting fill material, or placing any fill material on-site, at 20220 Morton Road, unless they first obtain a permit from the Harris County Engineering Department.

IT IS FURTHER ORDERED that Plaintiff, pursuant to Tex.Civ.Prac.&Rem.Code.Ann. §6.001 (Vernon 1988), is not required to file a bond in support of this order.

IT IS FURTHER ORDERED that trial on the merits of this cause is set for the 2nd day of September, 1996.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AND ENTRY  
REQUESTED:

MIKE DRISCOLL 99999939  
County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
Senior Assistant County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002  
(713) 755-8282  
Fax (713) 755-8772

ATTORNEYS FOR HARRIS COUNTY

DAN MORALES  
Attorney General of Texas

By: \_\_\_\_\_  
Liz Bills  
Assistant Attorney General  
Natural Resources Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2012  
Fax (512) 320-0911

ATTORNEYS FOR TEXAS NATURAL RESOURCE CONSERVATION  
COMMISSION

\_\_\_\_\_  
Warren Clayton Fry  
Pro Se Defendant

\_\_\_\_\_  
Elizabeth Ann Burt  
Pro Se Defendant



### Definitions

1. "20220 Morton Ranch Road" or "the site" means the real property described as a 45.85 acre tract of land in the H.&T.C.R.R. Company Survey, Abstract No. 437, Harris County, Texas and being a tract of land conveyed to Warren Clayton Fry, et al, as co-trustees as described in a deed recorded under County Clerk's file number L710911, executed June 1, 1988, and being more fully described in the attached Exhibit A.
2. "Development" means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and includes both complete and ongoing development.
3. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or other legal entity.
4. The word "and" means "and/or."
5. The word "or" means "or/and."
6. "You" or "your" means: Warren Clayton Fry, his agents, employees and persons acting in concert with him or under his control, whether directly or indirectly, including any attorney.
7. "Document" means all written, typed, reported, printed, recorded, taped, pictorial or graphic matter, and any other tangible permanent record or other data compilation from which information can be obtained or translated into reasonably usable form, however produced or reproduced, in whatever form maintained, that are in defendant's possession, custody or control.
8. "Possession, custody or control" means documents within defendant's possession, custody or control, including documents within the possession, custody and control of defendant's agents, auditors, employees, representatives or attorneys; documents that defendant has a legal right to obtain; and documents that defendant has placed in the temporary possession, custody or control of any third party.
9. "Refer or relate to," when used with respect to a given subject, means any document that constitutes, contains, evidences, identifies, refers to, deals with, comments on, responds to, describes or is in any way pertinent to that subject, including, without limitation, documents concerning the presentation or existence of other documents.
10. "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish,

ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

11. "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:
  - (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and
  - (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).
12. "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

#### Instructions

A. This Request for Production is served on you pursuant to TEX.R.CIV.P. 167. You must respond to each request separately, fully and in writing, file your responses with the clerk's office and provide the responses to Plaintiff, Harris County, Texas, by and through Clarissa Kay Bauer, Senior Assistant County Attorney, at 1001 Preston, Suite 634, Houston, TX 77002, within fifty (50) days after this Request for Production is served on you.

B. You must state, with respect to each document or category of items in the request, that inspection will be permitted as requested, or that objection is being made to the particular document or category of items. For each document or other requested information you assert is excludable from discovery, identify that document or other requested information. State the specific grounds for the claim of privilege or other ground for exclusion. Also, for each document, state the date of the document, the name, job title, and address of the person now in possession of the document; and a description of the subject matter of the document.

C. You must produce the requested documents for inspection as they are kept in the usual course of business, or you shall organize and label them to correspond with the categories in the request.

D. Your responses should be typed or handwritten in the space provided. If a response requires more space, please attach an additional page and identify that response by the request number.

E. You are required to apply due diligence in seeking out the documents and things requested. The answer that you have no knowledge of the matter requested is only appropriate after reasonable efforts by you to obtain the requested information.

### REQUEST FOR PRODUCTION

1. Produce copies of any written reports, including factual observations and opinions of any of the expert witnesses whom you may call at trial of this lawsuit.

RESPONSE:

2. Produce copies of all disposal receipts obtained when any waste (including municipal solid waste, rubbish and/or industrial solid waste) was removed from the site.

RESPONSE:

3. Produce all photographs or videotapes of the site taken on or after January, 1992.

RESPONSE:

4. Produce all experts' reports that have been prepared as a result of this lawsuit or the incident that is the basis of this lawsuit, of each testifying expert, and each consulting expert whose report has been reviewed by a testifying expert.

RESPONSE:

5. Produce all working papers, notes, calculations, diagrams, photographs, models, exhibits, and other documents, including reports and factual observations, prepared for or reviewed by any expert who will testify at trial.

RESPONSE:

6. Produce all treatises, rules, regulations, guidelines, statutes, policies, or procedures and any other authoritative materials reviewed by any expert who will testify at trial.

RESPONSE:

7. Produce a curriculum vitae for each expert you expect to testify at trial, and for each consulting expert whose opinions or observations a testifying expert will review or has reviewed.

RESPONSE:

8. Produce all invoices, bills, or other billing materials for each expert you expect to testify at trial, and for each consulting expert whose opinions or observations a testifying expert will review or has reviewed.

RESPONSE:

9. Produce all agreements for settlement, indemnification, compromise, guarantee, or any other kind of agreement which you have entered into with any party, or non-party, as a result of or relating to this lawsuit.

RESPONSE:

10. Produce any correspondence sent between you, your agents, employees or representatives, and Harris County (including any of its agencies or departments) concerning the property in this lawsuit.

RESPONSE:

Respectfully submitted,

MIKE DRISCOLL, 99999969  
Harris County Attorney

By: 

Clarissa Kay Bauer  
Senior Assistant County Attorney  
Environmental Division  
1001 Preston, Suite 634  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-8772

For Plaintiff, Harris County, Texas

EXHIBIT A

6710911

119-57-1162

WARRANTY DEED

06/15/23 00000000 6710911 1 2,19

THE STATE OF TEXAS

COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

THAT I, EMMA LEE FRY, Individually, and as Executor of the Estate of Warren Clifford Fry, Deceased, of Walker County, Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and the further consideration of the settlement and division of the Estate of Warren Clifford Fry, Deceased, the receipt of which is hereby acknowledged, have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY unto WARREN CLAYTON FRY and ELIZABETH ANN BURT, as Co-Trustees of the WARREN CLIFFORD FRY FAMILY TRUST under the Last Will and Testament of Warren Clifford Fry as found in the Probate Records of Harris County, Texas, under Probate Number 215,590, whose address is 108 Pine Valley, Huntsville, Walker County, Texas, all of the following described property in Harris County, Texas:

That certain 45.85 acre tract of land in the J. Clifford Survey, Harris County, Texas, more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the hereinabove described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantees, their successors and assigns forever, and Grantor does hereby, bind herself, her heirs, executors and administrators, to Warrant and Forever Defend all and singular the said premises unto the said Grantees, their successors and assigns, against every person whosoever lawfully claiming or to claim the same or any part hereof.

WITNESS my hand this 1st day of June, 1993

EMMA LEE FRY

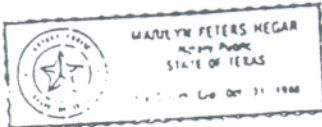
FILED FOR RECORD  
JUN 15 1993

119-67-1163

THE STATE OF TEXAS     6

COUNTY OF WALKER     6

This instrument was acknowledged before me on the 13<sup>th</sup> day of  
June, 1988, by EMMA LEE FRY.



SEAL

Marilyn Peters Hegar  
Notary Public, State of Texas

Printed Name of Notary: \_\_\_\_\_

My commission expires: \_\_\_\_\_



119-67-1164

EXHIBIT "A"

To Deed from Emma Lee Fry, Individually and as Executor of the Estate of Warren Clifford Fry, Deceased, to Warren Clayton Fry and Elizabeth Ann Burt as Co-Trustees of the Warren Clifford Fry Family Trust

BEGINNING at a gas pipe, the northwest corner of the J. Clifford Survey, and the most southern southwest corner of the lands and premises set aside and decreed to Charles D. Fry, in cause No. 172408, entitled *Lvra A. Fry et al vs. Roy C. Fry et al*, by decree of the 55th Judicial District Court of Harris County, Texas, recorded in Vol. 29, page 99, Minutes of said Court and to which reference is here made for all purposes; and which is also the beginning point of the heretofore described 137.56 acres of land;

THENCE north along the west line of said Charles D. Fry tract, 40 feet to an interior corner thereof,

THENCE west along the south line of said Charles D. Fry tract, parallel to and 40 feet distant from the south line of said John Fry 292-6/100 acre tract, 236-601/1000 varas to the southwest corner of said Charles D. Fry tract,

THENCE north along the west line of said tract, decreed to the said Charles D. Fry, 959-62/100 varas to the north line of said John Fry 292-6/100 acre tract and the north-west corner of said Charles D. Fry tract,

THENCE west along the north line of said John Fry 292-6/100 acre tract a sufficient distance so that a line drawn south therefrom to the most northern south line of the John Fry original 292-6/100 acre tract and the north line of the Oliver Fry tract and thence east along this line to the place of beginning will contain exactly 45.65 acres of land.

RECORDED IN HARRIS COUNTY

BOOK 119-67-1164 PAGE 1

FILED IN HARRIS COUNTY

BOOK 119-67-1164 PAGE 1

JUN 15 1968



County Clerk  
HARRIS COUNTY TEXAS

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

vs.

JUDICIAL DISTRICT

## I:\WORD60\FLOOD\FRY\DISCOVER.DOC

the date of each addendum, supplement, or other addition or change; the identity of the author and of the signer of the document; the identity of person on whose behalf or at whose request or direction the document was prepared or delivered and the current location of the document.

b. When referring to a person, "identify" means state the person's full name, the present or last known residential address and the present or last known residential and office telephone numbers. In the case of a person other than an individual, identify the officer, employee, or agent most closely connected with the subject matter of the interrogatory, and the officer who is responsible for supervising that officer or employee.

3. "Development" means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and includes both complete and ongoing development.

4. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or other legal entity.

5. The word "and" means "and/or."

6. The word "or" means "or/and."

7. "You" or "your" means: Warren Clayton Fry, his agents, employees and persons acting in concert with him or under his control, whether directly or indirectly, including any attorney.

#### Instructions

A. These interrogatories are served on you pursuant to TEX.R.CIV.P. 168. You must answer each interrogatory separately, fully, in writing and under oath, file your responses with the clerk's office and provide the responses to Plaintiff, Harris County, Texas, by and through Clarissa Kay Bauer, Senior Assistant County Attorney, at 1001 Preston #634, Houston, TX 77002, within fifty days after these interrogatories are served on you.

B. For each document or other requested information you assert is excludable from discovery, identify that document or other requested information. State the specific grounds for the claim of privilege or other ground for exclusion. Also, for each document, state the date of the document, the name, job title, and address of the person now in possession of the document; and a description of the subject matter of the document.

C. Your answers should be typed or handwritten in the space provided. If an answer requires more space, please attach an additional page and identify that answer by the interrogatory number.

D. Identify each person answering these interrogatories or supplying information to assist in the preparation of the answers to the interrogatories.

E. You are required to apply due diligence in seeking out the information requested. The answer that you have no knowledge of the matter requested is only appropriate after reasonable efforts by you to obtain the requested information.

### INTERROGATORIES

1. Identify each person answering these interrogatories, supplying information, or assisting in any way with the preparation of the answers to these interrogatories.

ANSWER:

2. State your full legal name, current business and residential address, day-time telephone number, date of birth, social security number and Texas drivers license number.

ANSWER:

3. State the nature of the business of Katy Tree Farms.

ANSWER:

4. Identify the name, address, and telephone number of every person having an ownership interest (whether equitable or legal) in the property located at 20220 Morton Ranch Road.

ANSWER:

5. Identify the name, address, and telephone number of every person with knowledge of facts relevant to the issues in this case.

ANSWER:

6. Identify any consulting expert whose opinions, mental impressions, or work product was reviewed by a testifying expert.

ANSWER:

7. Identify every person or entity who has possession, custody, or control of documents relevant to this lawsuit.

ANSWER:

8. Identify by name, address, and telephone number every potential party to this lawsuit.

ANSWER:

9. Identify the experts who may be called to testify at trial (identify by name, street address, place of employment and address, and telephone number.)

ANSWER:

10. What is the profession of each expert whom you may call to testify at trial and what are his or her professional credentials to give an opinion in this action?

ANSWER:

11. What is the substance of the opinion that each testifying expert who you may call to testify may give at trial?

ANSWER:

12. What are the facts that each testifying expert who you may call to testify has relied upon to give his or her opinion in this case?

ANSWER:

13. Identify each document and tangible thing prepared by or for any testifying expert in this case: (a) reviewed by such expert; (b) in anticipation of his or her trial deposition testimony; or (c) about which he or she will testify at trial.

ANSWER:

Respectfully submitted,

MIKE DRISCOLL 99999939  
Harris County Attorney

By: 

Clarissa Kay Bauer  
1001 Preston, #654  
Houston, Texas 77002  
(713) 755-8282  
Fax - (713) 755-8772

ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS

EXHIBIT A

L710911

119-57-1162

WARRANTY DEED

06/15/88 07:07:27 L710911 1 2.10

THE STATE OF TEXAS  
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

THAT I, EMMA LEE FRY, Individually, and as Executor of the Estate of Warren Clifford Fry, Deceased, of Walker County, Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and the further consideration of the settlement and division of the Estate of Warren Clifford Fry, Deceased, the receipt of which is hereby acknowledged, have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY unto WARREN CLAYTON FRY and ELIZABETH ANN BUPT, as Co-Trustees of the WARREN CLIFFORD FRY FAMILY TRUST under the Last Will and Testament of Warren Clifford Fry as found in the Probate Records of Harris County, Texas, under Probate Number 215,590, whose address is 108 Pine Valley, Huntsville, Walker County, Texas, all of the following described property in Harris County, Texas:

That certain 45.85 acre tract of land in the J. Clifford Survey, Harris County, Texas, more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the hereinabove described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantees, their successors and assigns forever, and Grantor does hereby bind herself, her heirs, executors and administrators, to Warrant and Forever Defend all and singular the said premises unto the said Grantees, their successors and assigns, against every person whatsoever lawfully claiming or to claim the same or any part hereof.

WITNESS my hand this 1st day of June, 1988.

EMMA LEE FRY

FILED FOR RECORD  
9:00 AM

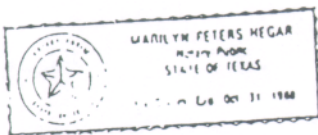
JUN 15 1988

119-67-1163

THE STATE OF TEXAS     6

COUNTY OF WALKER     6

This instrument was acknowledged before me on the 13<sup>th</sup> day of  
June, 1988, by EMMA LEE FRY.



SEAL

Marilyn Peters Hegar  
Notary Public, State of Texas

Printed Name of Notary:

My commission expires: \_\_\_\_\_



119-67-1164

EXHIBIT "A"

To Deed from Emma Lee Fry, Individually and as Executor of the Estate of Warren Clifford Fry, Deceased, to Warren Clayton Fry and Elizabeth Ann Burt as Co-Trustees of the Warren Clifford Fry Family Trust

BEGINNING at a gas pipe, the northwest corner of the J. Clifford Survey, and the most southern southwest corner of the lands and premises set aside and decreed to Charles D. Fry, in cause No. 172408, entitled Ivra A. Fry et al vs. Roy C. Fry et al, by decree of the 55th Judicial District Court of Harris County, Texas, recorded in Vol. 29, page 99, Minutes of said Court and to which reference is here made for all purposes; and which is also the beginning point of the heretofore described 137.56 acres of land;

THENCE north along the west line of said Charles D. Fry tract, 40 feet to an interior corner thereof,

THENCE west along the south line of said Charles D. Fry tract, parallel to and 40 feet distant from the south line of said John Fry 292-6/100 acre tract, 236-601/1000 varas to the southwest corner of said Charles D. Fry tract,

THENCE north along the west line of said tract, decreed to the said Charles D. Fry, 959-62/100 varas to the north line of said John Fry 292-6/100 acre tract and the north-west corner of said Charles D. Fry tract,

THENCE west along the north line of said John Fry 292-6/100 acre tract a sufficient distance so that a line drawn south therefrom to the most northern south line of the John Fry original 292-6/100 acre tract and the north line of the Oliver Fry tract and thence East along this line to the place of beginning will contain exactly 45.85 acres of land.

RECORDED IN THE COUNTY CLERK'S OFFICE

AT THE CITY OF HOUSTON, TEXAS  
THIS 15TH DAY OF JUNE 1928  
COUNTY CLERK

THE STATE OF TEXAS  
COUNTY OF HARRIS

I, COUNTY CLERK, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the Official Public Records of the County of Harris, Texas.

JUN 15 1928



*John L. ...*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

1.00

09/25/96 300073687 9133568

510-15-2299

HARRIS COUNTY, TEXAS

## 152nd JUDICIAL DISTRICT

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HARRIS	NO
COUNTY	FEF

By their duly authorized signatures below, all parties represent to the Court the following:

That they understand and agree to the terms of this judgment,

That this judgment represents a compromise and settlement of all matters placed in issue by Harris County's Original Petition,

That they waive all rights of appeal.

That they waive the necessity of the issuance and service of the writ of injunction.

That they waive the requirements of Texas Rules of Civil Procedure 680-691.

That they actively participated in the negotiations leading up to this judgment and are aware of the duties placed upon them by it and are desirous and capable of carrying out those duties in full,

That a copy of this injunction shall be filed in the Deed Records of Harris County, Texas and this injunction shall run with the land known as 20220 Morton Road.

pnllcon/judgfrj.doc

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
and not satisfactory for photographic  
reproduction and/or alterations were

VI0280P0189

That Warren Clayton Fry and the Warren Clifford Fry Family Trust are responsible for civil penalties and attorneys fees in this case; Harris County and the State agree to forego civil penalties against Connie Conklin Broussard Fry and Elizabeth Ann Burt, individually, and

That the parties enter this agreement because of the uncertainties and costs of litigation.

The parties request that the Court approve this final judgment.

This suit was filed by Harris County, alleging various violations by the defendants of the Texas Solid Waste Disposal Act.<sup>1</sup> The State of Texas, acting by and through the Texas Natural Resources Conservation Commission, was joined in this action as a necessary and indispensable party.<sup>2</sup>

The Court has reviewed this judgment and finds that it is proper and consistent with the intent and purposes of the Texas Solid Waste Disposal Act and the regulations promulgated thereunder. The Court approves it in all respects.

#### Injunctive Provisions

It is therefore ORDERED that defendants Warren Clayton Fry, Elizabeth Ann Burt, Connie Conklin Broussard, their agents, servants and employees, are hereby immediately mandatorily enjoined from causing, suffering, allowing, or permitting the placement of any municipal solid waste at 20220 Morton Road, Katy, Harris County, Texas, a parcel of land more specifically described as:

A 45.85 acre tract of land in the H.&T.C.R.R. Company Survey, Abstract No. 437, Harris County, Texas and being a tract of land conveyed to Warren Clayton Fry, et al, as co-trustees as described in a deed recorded under County Clerk's file number L710911, executed June 1, 1988, and being more particularly described in the attached Exhibit "A".

Concrete, brick, clean fill-dirt, and other inert material may be placed on-site if appropriate permits are first obtained from the Texas Natural Resource Conservation Commission or the Harris County Engineer's Office.

1. Tex. Health & Safety Code Ann. §361.223 (Vernon 1992 & Supp. 1996).  
2. Tex. Health & Safety Code Ann. §361.229 (Vernon 1992 & Supp. 1996).

**Civil Penalties**

The Court ORDERS that plaintiff Harris County and the State of Texas recover from defendant Warren Clayton Fry and the Warren Clifford Fry Family Trust the sum of Ten Thousand Dollars (\$10,000), together with interest at the rate of ten percent (10%) per annum from the date of judgment until paid, and that execution issue for this judgment. Warren Clayton Fry agrees to make payment by two checks: one in the amount of Five Thousand Dollars (\$5,000.00), plus any accrued interest, made payable to Harris County, Texas and one in the amount of Five Thousand Dollars (\$5,000.00), plus any accrued interest, made payable to the State of Texas. Payment shall be made by delivering the checks to Clarissa Kay Bauer, Senior Assistant County Attorney, at the address noted below beneath her signature line.

**Attorneys Fees**

It is further ORDERED that plaintiff Harris County, Texas recover from defendant Warren Clayton Fry and the Warren Clifford Fry Family Trust the sum of Five Thousand dollars (\$5,000.00), as attorneys fees in this case.

**Court Costs**

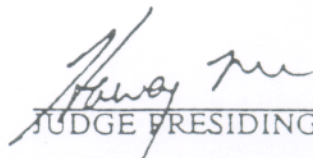
It is further ORDERED that Defendant Warren Clayton Fry shall pay all costs of court.

**Other Relief**

It is further ORDERED that Harris County and the State of Texas be allowed all such writs and processes as may be necessary in the collection or enforcement of this judgment.

The court denies all relief not granted in this judgment.

SIGNED this 6th day of September, 1996.

  
JUDGE PRESIDING

V10280P0191

510-15-2302

AGREED AND ENTRY REQUESTED:

MIKE DRISCOLL 99999939  
County Attorney

By: Clarissa Kay Bauer  
Clarissa Kay Bauer  
Senior Assistant County Attorney  
SBN 01920350  
1001 Preston, Suite 634  
Houston, Texas 77002  
(713) 755-8282  
Fax (713) 755-8772

ATTORNEYS FOR HARRIS COUNTY

DAN MORALES  
Attorney General of Texas

JORGE VEGA  
First Assistant Attorney General

LAQUITA A. HAMILTON  
Deputy Attorney General for Litigation

HAL R. RAY, JR.  
Chief, Natural Resources Division

By: \_\_\_\_\_  
Liz Bills  
Assistant Attorney General  
Natural Resources Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2012  
Fax (512) 320-0911

ATTORNEYS FOR TEXAS NATURAL RESOURCE CONSERVATION  
COMMISSION

Warren Clayton Fry  
Warren Clayton Fry  
20210 Pittsford Dr.  
Katy, Texas 77450  
(713) 492-6327

Individually and as co-trustee of the Warren Clifford Fry Family Trust

510-15-2303

Elizabeth Ann Burt 9/8/1996

Elizabeth Ann Burt  
441 F.M. 2821 East  
Huntsville, Texas 77340  
(409) 293-2888

Co-Trustee of the Warren Clifford Fry Family Trust

Connie Conklin Broussard 9-7-1996

Connie Conklin Broussard  
20210 Pittsford Dr.  
Katy, Texas 77450  
(713) 492-6327

Pro Se Defendant

V10280P0193

510-15-2304

AGREED AND ENTRY REQUESTED:

MIKE DRISCOLL 99999939  
County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
Senior Assistant County Attorney  
SBN 01920350  
1001 Preston, Suite 634  
Houston, Texas 77002  
(713) 755-8282  
Fax (713) 755-8772


ATTORNEYS FOR HARRIS COUNTY

DAN MORALES  
Attorney General of Texas

JORGE VEGA  
First Assistant Attorney General

LAQUITA A. HAMILTON  
Deputy Attorney General for Litigation

HAL R. RAY, JR.  
Chief, Natural Resources Division

By:   
Liz Bills  
Assistant Attorney General  
Natural Resources Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2012  
Fax (512) 320-0911

ATTORNEYS FOR TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Warren Clayton Fry  
20210 Pittsford Dr.  
Katy, Texas 77450  
(713) 492-6327

Individually and as co-trustee of the Warren Clifford Fry Family Trust

V10280P0194

510-15-2305

WD  
L710911

119-57-1162

WARRANTY DEED

06/15/88 00207667 L710911 \$ 7.00

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

THAT I, EMMA LEE FRY, Individually, and as Executor of the Estate of Warren Clifford Fry, Deceased, of Walker County, Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and the further consideration of the settlement and division of the Estate of Warren Clifford Fry, Deceased, the receipt of which is hereby acknowledged, have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY unto WARREN CLAYTON FRY and ELIZABETH ANN BURT, as Co-Trustees of the WARREN CLIFFORD FRY FAMILY TRUST under the Last Will and Testament of Warren Clifford Fry as found in the Probate Records of Harris County, Texas, under Probate Number 215,390, whose address is 108 Pine Valley, Huntsville, Walker County, Texas, all of the following described property in Harris County, Texas:

That certain 45.85 acre tract of land in the J. Clifford Survey, Harris County, Texas, more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the hereinabove described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantees, their successors and assigns forever, and Grantor does hereby bind herself, her heirs, executors and administrators, to Warrant and Forever Defend all and singular the said premises unto the said Grantees, their successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part hereof.

WITNESS my hand this 1st day of June, 1988.

*Emma Lee Fry*  
EMMA LEE FRY

EXHIBIT A

FILED FOR RECORD  
8 30 AM

JUN 15 1988

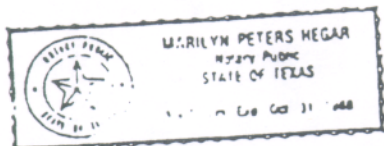
CG10400701A

119-67-1163

THE STATE OF TEXAS    6  
COUNTY OF WALKER    6

510-15-2306

This instrument was acknowledged before me on the 13<sup>th</sup> day of  
June, 1988, by EMMA LEE PRY.



SEAL

*Marilyn Peters Hegar*  
Notary Public, State of Texas

Printed Name of Notary: \_\_\_\_\_

My commission expires: \_\_\_\_\_

510-15-2307

119-67-1164

EXHIBIT "A"

To Deed from Emma Lee Fry, Individually and as Executor of the Estate of Warren Clifford Fry, Deceased, to Warren Clayton Fry and Elizabeth Ann Burt as Co-Trustees of the Warren Clifford Fry Family Trust

BEGINNING at a gas pipe, the northwest corner of the J. Clifford Survey, and the most southern southwest corner of the lands and premises set aside and decreed to Charles D. Fry, in clause No. 172408, entitled Ivra A. Fry et al vs. Roy C. Fry et al, by decree of the 55th Judicial District Court of Harris County, Texas, recorded in Vol. 29, page 99, Minutes of said Court and to which reference is here made for all purposes; and which is also the beginning point of the hereinabove described 137.56 acres of land;

THENCE north along the west line of said Charles D. Fry tract, 40 feet to an interior corner thereof,

THENCE west along the south line of said Charles D. Fry tract, parallel to and 40 feet distant from the south line of said John Fry 292-6/100 acre tract, 236-601/1000 varas to the southwest corner of said Charles D. Fry tract,

THENCE north along the west line of said tract, decreed to the said Charles D. Fry, 959-62/100 varas to the north line of said John Fry 292-6/100 acre tract and the north-west corner of said Charles D. Fry tract,

THENCE west along the north line of said John Fry 292-6/100 acre tract a sufficient distance so that a line drawn south therefrom to the most northern south line of the John Fry original 292-6/100 acre tract and the north line of the Oliver Fry tract and thence East along this line to the place of beginning will contain exactly 45.85 acres of land.

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY CAUSED BY PHOTO COPY OF SLOTTED PAPER, ETC.

ANY INSTRUMENT WHICH WHICH IN EFFECTS THE SALE, TRANSFER, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR SIZE IS DEEMED TO BE UNREPRODUCIBLE UNLESS PERIODICALLY THE STATE OF TEXAS } COUNTY OF HARRIS }

I, hereby certify that this instrument was FILED in the Recorder's Office on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

JUN 15 1988



*De Leon*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

*Accepting return to:*  
*Mike Deisco, County Clerk*  
*1001 Houston, Suite 634*  
*Houston, TX 77002*

*DL. C. V. Brown*

**CHAPTER 365. LITTER  
TEXAS LITTER ABATEMENT ACT**

**SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED**

**Section 365.011. DEFINITIONS.**

...

**(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.**

(9) "Solid waste" has the meaning assigned by Section 361.003.

... (37) "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

- (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;
- (ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
- (iii) waste materials that result activities...regulated by the Railroad Commission of Texas....

Section 365.012. ILLEGAL DUMPING; CRIMINAL PENALTIES.

(a) Elements

- (1) a person
- (2) disposes or allows or permits
- (3) the disposal of litter or other solid waste
- (4) at a place that is not an approved solid waste site,
- (5) including a place on or within 300 feet of a public highway, on a right of way, on other public or private property
- (6) or into inland coastal water of the state.

(b) Elements

- (1) a person
- (2) receives litter or other solid waste for disposal
- (3) at a place that is not an approved solid waste site,
- (4) 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) Elements**

- (1) a person**
- (2) transports litter or other solid waste**
- (3) to a place that is not an approved solid waste site**
- (4) for disposal at the site.**

**PUNISHMENT RANGE.**

**(d) CLASS C MISDEMEANOR –**

**If litter or other solid waste**

**weighs 15 pounds or less**

**Or has a volume of 13 gallons or less**

**(e) CLASS B MISDEMEANOR –**

**If litter or other solid waste**

**weighs between 15 pounds and 500 pounds**

**Or has a volume of more than 13 gallons**

**but less than 100 cubic feet**

**(f) CLASS A MISDEMEANOR --**

**(1) The litter or other solid waste**

**weighs 500 pounds or more**

**Or has a volume of 100 cubic feet or more;**

**or**

**(2) The litter or other solid waste**

**is disposed for a commercial purpose**

**and weighs more than five pounds**

**or has a volume of more than 13 gallons.**

**(g) IF PRIOR CONVICTION FOR OFFENSE UNDER THIS SECTION, PUNISHMENT INCREASED TO PUNISHMENT FOR NEXT HIGHEST CATEGORY.**

**(h) 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.**

- (i) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.
- (j) This section does not apply to the disposal of, or 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.

**Section 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 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.

**Section 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS**

- (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.
- (b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.
- (c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

DEFENDANT: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
 \_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 19\_\_  
 AGENCY: \_\_\_\_\_

ALLEGATION: ILLEGAL DUMPING (Transportation, Disposal and Receipt  
 Commercial Purpose) [§365.012(a), (b) & (c) H & S Code]

for a commercial purpose transport litter and other solid waste,  
 namely, \_\_\_\_\_,  
 having an aggregate weight of more than five pounds, to a place  
 that was not an approved solid waste site for disposal at the site.

for a commercial purpose dispose, allow, and permit the disposal  
 of litter and other solid waste, namely, \_\_\_\_\_,  
 having an aggregate weight of more than  
 five pounds, at a place that was not an approved solid waste site.

for a commercial purpose receive litter and other solid waste,  
 namely, \_\_\_\_\_,  
 having an aggregate weight of more than five pounds, for disposal  
 at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 19\_\_

Cause Number \_\_\_\_\_ County Crim Ct at Law \_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

WITNESSES

1. \_\_\_\_\_ (Complainant)
2. \_\_\_\_\_ (Field Investigator)

DOCUMENTARY EVIDENCE:

Requested      Received      Filed in court<sup>1</sup>

1. Negative cert from \_\_\_\_\_  
 Texas Water Commission<sup>2</sup> \_\_\_\_\_

REVISED 2/23/94

<sup>1</sup> Must be filed in court, with notice to Defendant, 14 days prior to trial under Tex.Cr.Evid.R.  
 2(10).

<sup>2</sup> Request from Texas Water Commission.

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 19\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: ILLEGAL DUMPING -- NON-COMMERCIAL (A)  
(Transportation/Disposal/Receipt) [§365.012(a), (b) & (c), H&S Code]

transport litter and other solid waste, namely, \_\_\_\_\_,  
\_\_\_\_\_ having an aggregate weight of  
500 pounds or more, and a volume of 100 cubic feet or more, to a  
place that was not an approved solid waste site for disposal at  
the site.

It is further presented that in Harris County, Texas, (DEFENDANT),  
hereafter styled the Defendant, heretofore on or about (DATE) did  
then and there unlawfully

dispose, allow, and permit the disposal of litter and other solid  
waste, namely, \_\_\_\_\_,  
\_\_\_\_\_ having an aggregate weight of 500 pounds or more, and a volume of  
100 cubic feet or more, at a place that was not an approved solid  
waste site.

It is further presented that in Harris County, Texas, (DEFENDANT),  
hereafter styled the Defendant, heretofore on or about (DATE) did  
then and there unlawfully

receive litter and other solid waste, namely, \_\_\_\_\_,  
\_\_\_\_\_ having an aggregate weight  
of 500 pounds or more, and a volume of 100 cubic feet or more, for  
disposal at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 19\_\_; Cause No. \_\_\_\_\_; CCCL No. \_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

WITNESSES

1. \_\_\_\_\_ (Complainant)
2. \_\_\_\_\_ (Field Investigator)

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 19\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: ILLEGAL DUMPING -- NON-COMMERCIAL (B)  
(Transportation/Disposal) [§365.012(a)&(c), H&S Code]

transport litter and other solid waste, namely, \_\_\_\_\_,  
having an aggregate weight of  
more than fifteen pounds and less than 500 pounds, and a volume of  
more than thirteen gallons and less than 100 cubic feet, to a place  
that was not an approved solid waste site for disposal at the site.

It is further presented that in Harris County, Texas, (DEFENDANT),  
hereafter styled the Defendant, heretofore on or about (DATE) did  
then and there unlawfully

dispose, allow, and permit the disposal of litter and other solid  
waste, namely, \_\_\_\_\_,  
having an aggregate weight of more than fifteen pounds and less  
than 500 pounds, and a volume of more than thirteen gallons and  
less than 100 cubic feet, at a place that was not an approved solid  
waste site.

CASE FILED: \_\_\_\_\_, 19\_\_

Cause Number \_\_\_\_\_ County Crim Ct at Law \_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

WITNESSES

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)

DOCUMENTARY EVIDENCE:

Requested Received Filed in court<sup>1</sup>

1. Negative cert from  
Texas Water Commission<sup>2</sup> \_\_\_\_\_

REVISED 2/23/94

<sup>1</sup> Must be filed in court, with notice to Defendant, 14 days prior to trial under Tex.Cr.Evid.R.  
902(10).

<sup>2</sup> Request from Texas Water Commission.

## HYPOTHETICALS

1. The Fire Department responds to a building fire, and discovers that the building is filled floor to ceiling with large tires. Fire Department notifies Police Department about the tires. At location, PO finds that, adjacent to the building, Owner is building a parking lot, which is only partially complete. Upon inspection of this parking lot, PO finds that Owner has layered certain materials to construct the parking lot. Owner has put down a heavy gauge plastic liner, and the layers are as follows:

- a) Layered Asphalt Shingles
- b) Aircraft Tire Sidewalls, stacked 18" high
- c) A Mixture of Oyster Shell and Dirt

Has Owner committed any violations, and if so, which ones?

d

The Dallas Morning News

Monday, August 11, 1997

## EDITORIALS

## ILLEGAL DUMPING

## Another blight that spoils poorer neighborhoods

There wasn't a dump at the end of the block when Peggy Sneed bought her modest home two decades ago. Then, the large tract was an undeveloped, wooded expanse bordered by a small creek — the sort of place kids in her Pleasant Grove neighborhood loved to explore.

"My daughter used to ride her horses down there," said Mrs. Sneed, now a gray-haired grandmother with earnest brown eyes. "It used to be great."

Now, behind a rickety corrugated metal fence, mounds of concrete rubble, derelict trucks and who knows what else cover much of the 13-acre lot. Mrs. Sneed says her neighbors have choked on dust as trucks roared onto property to dump debris.

"It's gone down to a point where it's financial," Mrs. Sneed said. "It's ruining the neighborhood. ... We started talking about selling our house, but who's going to buy it?"

The lot's caretakers don't like the dumping either. The lot belongs to a family trust, and the trust's attorney said he's never given anyone permission to dump there. A three-foot mound of dirt across the lot's entrance now blocks access; dumpers had repeatedly cut padlocks off a gate.

The Lawnview mess is just one example of why Dallas needs to intensify its battle against illegal dumping. Residents — tax-paying, voting residents — are continuing to see their neighborhoods trashed.

Only 483 of 1,354 identified illegal dump sites were cleaned up from January 1996 to February 1997. In recent years, hundreds of dumping-related citations were dismissed by a municipal judge who said they should have been filed in state court. Illegal dumpers simply escape punishment too often, and neighborhoods suffer for it.

If Dallas leaders want development in neglected corners of the city, if they want all residents to enjoy a decent quality of life, if they want to prevent flooding and pollution, Dallas must improve its ability to prevent illegal dumping and clean up dump sites. The city's anti-illegal dumping effort requires a larger staff, better legal support and, most of all, heightened public awareness. City Council members should address the issue as they consider the 1998 budget.

There are two kinds of illegal dumpers: big ones and little ones. Neither kind is likely to be caught.

The big operators use dump trucks and tractor-trailers. Some run black market landfills. These folks open up their own property and allow just about anybody to dump just about anything, completely ignoring all local and state regulations.

The property owner charges a fee for dumping, but it's less than the disposal fee at the legal landfill. The haulers are happy

because they pay less than at the permitted landfill. The owner/operator pockets that fee as pure profit; sometimes, that's enough to pay for a good lawyer when city officials try to shut the operation down.

Small time offenders may be part time offenders who dump a load of broken shingles in an empty lot, or a family that dumps a worn sofa off the back of its pickup. These dumpers are so numerous and so dispersed that they're hard to catch. They live and work in every jurisdiction in North Texas, and cross city limits to dump. Their activities hurt neighborhoods just as big time operators do.



First of a series

Most major dump sites share certain qualities: They're typically south of Interstate 30 or the Trinity River, surrounded by low- or moderate-income neighborhoods, screened by woods, and lie partly in flood plains. Vacant lots and dead-end streets attract illegal dumpers.

The City Council and city manager should make illegal dumping a priority because:

- It's illegal. People who dump illegally are outlaws.

- It can create health and environmental risks. A pile of rain-filled, discarded tires is a honeymoon suite at the Ritz to mosquitoes. Some waste contains solvents or other chemicals that leach into ground water, or deteriorate into dust laced with heavy metals or asbestos.

- Some illegal dump sites create traffic hazards. The Lawnview dump is on a curving, hilly, two-lane residential street. The entrance to an unauthorized dump at 5000 Wedsworth is a sharp right turn just before an on-ramp to Interstate 45. (The heavy truck traffic going to some major illegal dump sites has probably damaged city streets, too.)

- If the dump lies in the flood plain, the dumped material can increase flooding by reducing the flood plain's ability to store water. Waste also washes into creeks, which pollutes them and impedes drainage.

No one knows whether illegal dumping has increased. But the rebounding local economy may exacerbate the problem. Old houses and buildings are being torn down or extensively renovated. All that construction debris must go somewhere.

In addition, fierce hailstorms forced thousands of homeowners to replace their roofs in recent years. Those damaged shingles require disposal.

Dallas can't afford not to crack down on illegal dumping. The city spent more than \$1.5 million to fight a monthlong fire at an illegal landfill in Southeast Dallas this year; a complete cleanup of the site will require several million dollars. Compared to those costs — for a single site — doubling the city's illegal dumping effort would be cheap.

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# MHA

## Technical Group

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October 6, 1997

Mr. Dave Yanke  
 Director of Operations  
 Reed-Stowe & Company  
 101 W. 6<sup>th</sup> Street, Suite 225  
 Austin, Texas 78701

RE: COST FOR TYPE IV LANDFILLS FOR MONTGOMERY COUNTY

Dear Mr. Yanke:

MHA TECHNICAL GROUP (MHA) is pleased to aid you in your study for the Houston-Galveston Area Council of Governments (H-GAC). MHA is uniquely qualified to offer you assistance in this study due to our vast experience with Type IV Landfills. Collectively, MHA has been involved in permitting, monitoring, and/or construction engineering efforts associated with over 18 Type IV Landfills. MHA has offices in Houston, Texas (HMA Environmental Services, Inc.), Texarkana, Texas (Murray, Thomas, & Griffin, Inc.), Austin, Texas (R. W. Sims Engineering, Inc.), and Grupo MHA Tech S.A. de C.V. (Mexico City, Mexico). Our combined staff totals over 50 professionals that have been offering solid waste consulting services for over 25 years.

MHA personnel have been involved in the permitting of over five Type IV Landfills in the H-GAC region. Our staff has been involved in all phases of these projects from the initial project inception to oversight of site operations.

It is our understanding that this is a study of the waste disposal options and the associated costs for the accelerated growth being experienced in Montgomery County. In response to your request for our input on the costs associated with permitting and operating Type IV Landfills in the HGAC area, MHA offers the following:

### Waste Streams Acceptable at Type IV Landfills:

Type IV Landfills are permitted to accept the following waste:

30 TAC §330.117(e) states: "At Type IV sites, only B&CD wastes and rubbish (trash) that are free of putrescible and household waste may be accepted."

Class III Industrial Waste is also acceptable at Type IV Landfills pursuant to 30 TAC §330.137(k).

These waste are defined in 30 TAC §330.2 as:

***Rubbish*** - Non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

***Refuse*** - Same as Rubbish.

***Construction-demolition waste*** - Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

***Class III industrial solid waste*** - is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class III Waste Determination).

### **Other TNRCC Rules That Affect Siting of Type IV Landfills**

Additionally, Type IV Landfills have a unique requirement placed on them by 30 TAC §330.41(e) which effectively requires that a Type IV Landfill shall not be permitted within 900 feet of a public road. Due to this any site selected for a Type IV Landfill will need to be set back from public rights-of-way by at least 900 feet. This requires the acquisition of an excess of property or an easement, as well as the costs associated with the construction of an access road.

### **MONTGOMERY COUNTY WASTE STREAM PROJECTIONS**

Based on information you have provided MHA, the Montgomery County annual waste stream of construction and demolition waste, acceptable at a Type IV Landfill, has been estimated to be approximately 300,000 cubic yards per year. Assuming that a Type IV Landfill operated 6 days/week 52 weeks per year for 312 days/year to accommodate this waste stream, the projected daily gate volume would be approximately 960 to 1,000 cubic yards/day. In the experience of MHA, for a Type IV landfill operation to be commercially viable, a minimum of 5 million net cubic yards of disposal

volume is preferable. Therefore, a site with at least 60 acres of usable area is required while a site of 100 acres or larger is preferred. Usable area in this context means land that is not encumbered with limited use due to flood plain, wetlands, or endangered species. Further, the design of the landfill site should be structured such that a minimum "site life" of 10 years is provided, in order to evenly accommodate the annualized cost of financial assurance and to generally make the entire permitting process worth the expense and effort. Further, the site of a Type IV Landfill should be located in a suitable geologic setting that does not necessitate the importation of clay soils for liner and final cover construction. In our suggestions provided hereafter, no costs have been allocated for a "less than optimum" site; e.g. no allowance for importation of materials of construction, reclamation of flood plain areas, mitigation of wetlands, mitigation for endangered species or construction of flood protection measures.

## IMPLEMENTATION ACTIVITIES

Implementation activities associated with a Type IV Landfill Project generally consist of several phases and associated costs listed as follows:

1. Permitting costs
  - A. The geotechnical exploration and engineering services for a Type IV Landfill Application Permit Package; and
  - B. A Public Hearing on the merits of the permit application before the State Office of Administrative Hearings, necessitates additional engineering and legal fees.
2. Design and initial construction costs
  - A. This will include engineering design, and preparation of construction plans, construction bid documents, and construction engineering support services, as well as initial construction;
  - B. The initial construction may include (3<sup>rd</sup> party contractor):
    1. clearing and grubbing of the site,
    2. access control such as fencing and site markers,
    3. access and gatehouse,
    4. storm water control and detention facilities,
    5. initial cell excavation,
    6. initial liner construction, and
    7. groundwater monitoring systems required by the permit

3. Operational expenses

A. These include:

1. salaries of site personnel,
2. capital cost of equipment (principal and interest),
3. repair and maintenance cost of equipment,
4. groundwater monitoring sampling and analysis,
5. operational cost of equipment (fuel),
6. insurance,
7. annual landfill engineering & 3<sup>rd</sup> party contractor construction cost, and
8. financial assurance of closure and 5 years of post-closure care

4. Other costs

- A. State Tipping Fee,
- B. Land Purchase or Lease Cost, and,
- C. Financial Costs such as debt service.

## PERMITTING COST

The geotechnical exploration and engineering costs for preparation of a Type IV Landfill Permit Application will generally range between \$325,000 to \$ 500,000. This does not include expenses for a Public Hearing. The typical additional engineering costs for the Engineer-of-Record at a Public Hearing will range between \$35,000 to \$100,000.

A Public Hearing for the permit application, if required, will typically add an additional cost of \$200,000 to \$500,000, comprised of additional specialized professional services (geotechnical, traffic, environmental, etc.) and legal fees.

## DESIGN AND INITIAL CONSTRUCTION COST

The cost for construction design and preparation of Construction Bid Documents will range between \$150,000 to \$200,000.

The Initial Construction will most probably be performed through 3<sup>rd</sup> party contractors and should range between \$800,000 to \$2,000,000.

The off-site access road will need to be a non-public right-of-way at least 900 feet long and have a pavement width of at least 40 feet. The roadway should be a paved road with a load design capacity of 100,000 pounds. The estimated costs of the access road and associated drainage controls is between \$100 to \$120 per foot of length. Thus, the access road, drainage controls, fencing and gate cost between \$90,000 to \$108,000.

### ANNUAL OPERATIONAL EXPENSES

Provisions should be made within operating budgets to accommodate the following operation expenses:

Salaries	\$500,000 to \$600,000 / year
Repair and maintenance	\$100,000 to \$125,000 / year
Fuel	\$35,000 to \$40,000 / year
Insurance	\$90,000 to \$105,000 / year
Groundwater Monitoring	\$35,000 to \$40,000 / year
Equipment Rental for operations, with 5 year life cycle	\$200,000 to \$225,000 / year
Annual Landfill Engineering & Construction Administration	\$100,000 to \$125,000 / year

Annual Construction includes (assumes 10 acre cell construction):

Engineering Construction Document	\$30,000 to \$50,000 / 10 ac cell
Liner excavation & construction	\$1.75 to \$2.25 / square foot (\$750,000 to \$1,000,000 / 10 ac cell)
Soil Liner Evaluation Report SLER	\$0.25 to \$0.30 / square foot (\$109,000 to \$130,000 / 10 ac cell)
3 <sup>rd</sup> Party Construction Contractor	\$750,000 to \$1,250,000 / year

### FINANCIAL ASSURANCE COST

The requirements of the FAC prescribe the posting of financial assurance for the closure of the site and for post-closure care of the site for 5 years after closure. This financial assurance provision may have to address potential assurance costs between \$3,000,000 to \$5,000,000. Letters of Credit, bonds or other methods of posting this financial assurance are required to be filed with the TNRCC after the permit is approved and before waste is received. This would typically result in an annual

Mr. Dave Yanke  
Montgomery County  
Type IV Landfill Cost  
Page 6

cost to the landfill operation on the order of \$20,000 to \$50,000 per year. However, governments may have other available means or methods to provide this assurance.

## OTHER COST CONSIDERATIONS

Other cost considerations should include provisions for such items as land purchase or lease cost (with associated royalties), access easement or right-of-way costs, State Tipping Fee (a tax due to the State of Texas for each cubic yard of waste disposed of in the landfill), and debt service.

## CLOSING

The information provided herein is a general reflection of the observations of MHA in our project experience. We hope this information is informative and helpful to you as you prepare this study. We would be happy to provide additional engineering insight or services associated with any project considerations resulting from this study. If you have further questions, please do not hesitate to contact me at 512.250.8832

Sincerely,

**MHA Technical Group / Austin**  
R. W. Sims Engineering, Inc.

A handwritten signature in cursive script, appearing to read "Robert W. Sims".

Robert. W. Sims, P.E.  
President

- 2001

6/7/94

221 20

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Section 301 of CHAPTER 52, "ADMINISTRATIVE PROCEDURES FOR THE CONSTRUCTION CODES," and Section 3204 and Appendix Section 3210 of CHAPTER 53, "DALLAS BUILDING CODE," of the Dallas City Code, as amended; [requiring a permit to reroof a single-family or two-family dwelling where the value of the work exceeds \$500] eliminating wood shingles and wood shakes as nonrated roof coverings; [requiring verification of the disposal of reroofing debris at legal dumping sites] providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Subsection (b) of Section 301, "Permits," of Subchapter III, "Permits and Inspections," of CHAPTER 52, "ADMINISTRATIVE PROCEDURES FOR THE CONSTRUCTION CODES," of the Dallas City Code, as amended, is amended to read as follows:

"(b) Defenses. It is a defense to prosecution under Subsection (a) of this section that the act is included in one of the enumerated categories listed in this subsection. No permit is required for:

(1) the restoration on a temporary basis of electrical service under emergency conditions when approval of the work is obtained from the building official

22120

942541

4. Thermoset membrane assemblies not meeting Class A, B, or C roofing.

~~5. Wood shingles.~~

~~6. Wood shakes.]~~

SECTION 3. That Section 3210, "Inspections," of Appendix Subchapter 32, "Reroofing," of CHAPTER 53, "DALLAS BUILDING CODE," of the Dallas City Code, as amended, is amended to read as follows:

### "Inspections"

Sec. 3210. New roof coverings shall not be applied without first obtaining a permit from [a inspection by] the building official, unless the value of the work does not exceed \$500. An application for a permit to reroof must include a list of sites to be used for the disposal of reroofing debris [and written approval from the building official]. A final inspection and approval shall be obtained from the building official when the reroofing is complete. No final inspection may be performed or approval of work given until proof is submitted to the building official that all debris from the reroofing was disposed of at a city of Dallas landfill or transfer station. [The pre-roofing inspection shall pay particular attention to evidence of accumulation of water. Where extensive ponding of water is apparent, an analysis of the roof structure for compliance with Section 3207 shall be made and corrective measures, such as relocation of roof drains or scuppers, resloping of the roof or structural changes, shall be made.

An inspection report covering the above listed topics prepared by a special inspector may be accepted in lieu of the preinspection by the building official.]

SECTION 4. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 5. That CHAPTERS 52 and 53 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

## **Houston - Galveston Area Council Illegal Dumping Study**

### **Documents Reviewed**

1. Contracting for Solid Waste Services, A Workbook for Cities and Counties, H-GAC, September 1996
2. Environmental Law Enforcement Training Conference, February 24, 25 1997, (sponsored by: TNRCC; H-GAC; University of Houston Criminal Justice Center; Commissioner Steve Radack, Harris County Precinct 3; City of Houston)
3. Illegal Dumping Assessment of Impacts on County Governments in the Texas-Mexico Border Region, TNRCC (AS-138), July 1997
4. Illegal Dumping: Incidence, Drivers, and Strategies, by Lisa Skumatz, Hans Van Dusen and Jennie Carto
5. Kaufman County Solid Waste Management Plan, May 1997
6. Montgomery County Audited Financials, September 30, 1995 and September 30, 1996
7. Montgomery County Budget, Fiscal Years 1995-1996, 1996-1997
8. Montgomery County Solid Waste Management Screening Study, December 15, 1994
9. Municipal Solid Waste Groundwater Protection Cost Study (Including Subtitle D Requirements), Texas Water Commission (LP 92-94), November 1992
10. Outdoor Burning in Texas, TNRCC (RG-49), April 1997
11. Resource Responsibility
  - ◆ Solid Waste Management Plan for the H-GAC Region, 1992-2012 (February 1994)
  - ◆ Solid Waste Management Plan for the H-GAC Region, 1992-2012 - Executive Summary (February 1994)
  - ◆ 1996 Update (November 1996)
12. Status Report - Municipal Solid Waste Management in Texas, TNRCC, April 1997
13. Stopping Illegal Dumping, Regional Solid Waste Management Plan for North Central Texas
14. Strategic Plan - Municipal Solid Waste Management in Texas, TNRCC, March 1997
15. Survey of the Costs Associated with Illegal Dumping in Philadelphia, Pennsylvania Economy League Inc., June 1995
16. Wharton County Audited Financials, December 31, 1996
17. Wharton County Budget, 1996

## Houston - Galveston Area Council Illegal Dumping Study

### Interviews

#### Montgomery County

ALAN B. SADLER  
County Judge

DEAN TOWERY  
Director, Public Works, City of Conroe

RODNEY SMITH  
Public Relations, Waste Management

JIM STRONG  
County Judge's Office

GEORGE BIERNESSER  
Chief of Police, City of Oak Ridge North

MARY SZILAGYI-OVAITT  
Attorney, County Attorney's Office

MIKE MEADOR  
Commissioner, Precinct 1

ANDY WALTERS  
Detective, City of Oak Ridge North

JUNIOR ELDRIDGE  
Deputy, Environmental Officer  
Precinct 4

MALCOLM PURVIS  
Commissioner, Precinct 2

MIKE ARTHUR  
City Manager, City of Willis

TOMMY GAGE  
Deputy, Environmental Officer  
Precinct 2

ED CHANCE  
Commissioner, Precinct 3

PETE MARTINEZ  
Manager, Nature's Way

CLYDE SCRUGGS  
Inspector, Environmental Health Division

JIM SIMMONS  
Commissioner, Precinct 4

RICH SINGER  
Manager, Security Landfill,  
Waste Management

#### Wharton County

LAWRENCE NAISER  
County Judge

PHILLIP MILLER  
Commissioner, Precinct 3

TERRY ROBERTS  
City Manager, City of El Campo

MICKEY REYNOLDS  
Commissioner, Precinct 1

CATHERINE DRAPELA  
Commissioner, Precinct 4

PHILLIP BUSH  
Director, Public Works,  
City of Wharton

CHRIS KING  
Commissioner, Precinct 2

ELLOY CANALES  
Deputy, Environmental Officer

#### Harris County / City of Houston

STEVE RADACK  
Commissioner, Precinct 3

CLARISSA BAUER  
Assistant County Attorney

ANDY VANCE  
TNRCC Enforcement

TED HEAP  
Captain, Environmental  
Enforcement Division

ROGER HASEMAN  
Assistant District Attorney

BRENT WATTS  
TNRCC Enforcement

CAROLE LENZ  
Community Aide, Precinct 3

PAT PENDLETON  
Harris County Pollution  
Control Department

TED HAZEN  
TNRCC Special Events,  
Outreach Assistant

CATHY SISK  
Assistant County Attorney

TOM COLLINS  
Rat on a Rat, City of Houston