



**ILLEGAL DUMPING**

# WHERE IS IT IN THE CODE?

- It is NOT in the Texas Penal Code
- Authority to prosecute comes from *Chapter 365 of the Health and Safety Code (H&SC)*

# Chapter 365 H&SC – Litter

- Subchapter B / Certain Actions Prohibited
- Section 365.012 – Illegal Dumping / Criminal Penalties (Covers “other solid waste” in addition to “Litter”)
- **361.003 of the H&SC defines “solid waste”**

# THE ELEMENTS

- The prosecutor **MUST** prove the following elements Beyond a Reasonable Doubt...

# THE ELEMENTS / H&SC (365.012)

- On a specified date
- Defendant
- Intentionally, Knowingly or Recklessly
- “Receives”
- and / or “Disposed of” or “Allowed to be Disposed”
- and / or “Transported”
- “Litter” and / or “Other Solid Waste”
- for a “Commercial Purpose”
- **A certain WEIGHT and / or VOLUME of “LITTER” or “OTHER SOLID WASTE”**
- **At a Place that is NOT an APPROVED SOLID WASTE SITE**

# Is It a MISDEMEANOR or a STATE JAIL FELONY?

- The prosecutor will charge the offense as a Class C, B, or A misdemeanor, or State Jail Felony, DEPENDING on **the WEIGHT and / or VOLUME** of the LITTER or OTHER SOLID WASTE dumped / discarded / transported.
- **NOTE:** To charge the offense as a STATE JAIL FELONY, you must plead ***a culpable mental state***

THE ADDITION OF A **COMMERCIAL  
PURPOSE** ELEMENT...

You can CHARGE a State Jail Felony  
with a lower WEIGHT or smaller  
volume if you can show a  
COMMERCIAL Purpose

## CLASS C MISDEMEANOR

- No commercial purpose required
- 5 lbs or less
- 5 gallons or less



## CLASS B MISDEMEANOR

- $>$  than 5 lbs but  $<$  than 500 lbs;  
or
- A volume  $>$  than 5 gallons but  $<$  100 cubic feet

# CLASS A MISDEMEANOR

- **IF NOT FOR A COMMERCIAL PURPOSE:**
  - ≥ 500 lbs but less than 1000 lbs; or
  - a volume ≥ 100 cubic feet but < 200 cubic feet
- **IF FOR A COMMERCIAL PURPOSE**
  - >5 LBS BUT < 200; OR
  - >5 GALLONS BUT < 200 CUBIC FEET

# HOW TO PROVE COMMERCIAL PURPOSE

- Its **presumed** to be for a commercial purpose
- **H&SC, Section 365.014(b)**: “A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose”

# STATE JAIL FELONY



- If **NOT for a Commercial Purpose**, to charge as a state jail felony, the litter or other solid waste must weigh **1000 pounds or more**, or have a volume of 200 cubic feet or more
- If **FOR a Commercial Purpose**, to charge as a felony, the litter or other solid waste must weigh only **200 lbs or more**, or has a volume of 200 cubic feet or more

# ENHANCEMENTS

- **H&SC, Section 365.012(h):** If it is shown on the trial of the defendant for an offense under this section that the defendant *has previously been convicted of an offense under this section*, the punishment for the offense is increased to the punishment for the next highest category.
- So if the Defendant is charged with a State Jail Felony and he has a prior Class B Misdemeanor Conviction for illegal dumping, enhance to a Third Degree Felony

# What is MOSTLY Being Dumped?

- Household Litter
- **Tires**
- Couches
- Construction Materials
- **Dirt**



# “Litter” Defined / H&SC 365.011



**(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

**(B) (i-iii) NONDECAYABLE SOLID WASTE**, except ashes, that consist of:

# NONDECAYABLE SOLID WASTE

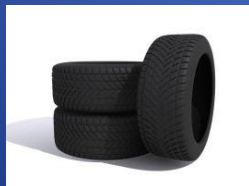
- (B) **combustible waste material**, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;



- (B)(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



- (B)(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.





# What if its NOT Litter?

- If it is not litter, then ask, **“Is it SOLID WASTE”?**
- **Section 361.003 of the H&SC defines “solid waste” as meaning** 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 from community and institutional activities.

# WHAT ISN'T "SOLID WASTE"?

- “The term does NOT include:
- 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.”
- 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;
- Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas

# What about dumping in a DUMPSTER?

- (j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.
- WHY? The dumpster at Waterburger is not for you to dump your household waste at! Don't forget the definition of an **“approved solid waste site.”**

# “APPROVED SOLID WASTE SITE”



Sec. 365.011(1). “Approved Solid waste site means:

- (a) A solid waste site permitted or registered by the Texas Natural Resource Conservation Commission (or Texas Commission on Environmental Quality);
- (b) A solid waste site licensed by a county under chapter 361;
- (c) A designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site

- Also, Sec. 365.017 (c) - “ ‘Illegally dumped litter’ means litter dumped ANYWHERE OTHER THAN in an approved solid waste site.”

# WHAT ABOUT “HAZARDOUS WASTE”?



Solid waste DOES include hazardous substances for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345

(Administrative Orders and Injunctions Brought by the State in the Event a Release or Threatened Release)

# AFFIRMATIVE DEFENSES TO DUMPING

- It is an affirmative defense to prosecution under Sec. 365.012 that:  
365.012(l):
  - (1) the litter or waste generated is generated on land the individual owns;
  - (2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
  - (3) the disposal occurs on land the individual owns; and
  - (4) the disposal is not for a commercial purpose.

## Also...

- This section does not apply to the **temporary storage** for *future disposal* of litter or other solid waste *by a person on land owned by that person*, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.



# PERSON? WHAT ABOUT CORPORATIONS?

- Section 1.07 of the Texas Penal Code: "Person" means an individual, corporation, or association.
- Section 1.07(26) of the TPC: "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.
- In the Texas Water Code, the fines will vary depending on whether an "individual" is charged or a "person other than an individual"

# HOW TO WE CHARGE THE CORPORATION?

- Is the individual acting as the corporation's AGENT?

(1) Is he acting on behalf of an entity

AND

(2) Within the scope of their office or employment

# SEEMS EASY ENOUGH TO CHARGE A CORPORATION, RIGHT?

- With a Misdemeanor, yes...
- TPC, Section 7.22: An entity is criminally responsible for a FELONY offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:
  - (1) *the MAJORITY of the governing board* acting on behalf of the entity;
  - (2) *A HIGH managerial agent* acting on behalf of the entity and within the scope of their office or employment

# PENALTIES & PUNISHMENTS FOR AN INDIVIDUAL

- **Class C Misdemeanor:** Up to a \$500 Fine
- **Class B Misdemeanor:** Up to 180 days jail time and up to a \$2000 fine;
- **Class A Misdemeanor:** Up to 1 year in jail and up to \$4,000 fine
- **State Jail Felony:** 180 days to 2 years in jail and up to a \$10,000 fine.

# PUNISHMENTS FOR CORPORATIONS

## TPC, SECTION 12.51

- **Class C Misdemeanor:** \$2000.00
- **Class B or A Misdemeanor:** \$10,000.00
- **Felony:** \$20,000.00
- **Felony or Class A & SBI or Death:** \$50,000.00

# Interesting Statistics at HCDO

- 344 Illegal Dumping Cases were filed and disposed of in 2016
- 51% (175) had no prior criminal record in Harris County
- 47% (165) had a prior conviction for a non-environmental crime in Harris County
- 1% (4) had a prior environmental crime conviction in Harris County