

**ENVIRONMENTAL CIRCUIT  
RIDER PROGRAM:**



**CRIMINAL  
ENVIRONMENTAL  
ENFORCEMENT AND  
PROSECUTION**

**FALL 2004**



Houston-Galveston  
Area Council

PREPARED IN COOPERATION WITH THE HOUSTON-GALVESTON  
AREA COUNCIL AND THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY.



**ENVIRONMENTAL CIRCUIT RIDER PROGRAM:  
CRIMINAL ENVIRONMENTAL ENFORCEMENT AND PROSECUTION**

**FALL 2004**

**PREPARED FOR:**

**HOUSTON-GALVESTON AREA COUNCIL  
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HOUSTON, TEXAS 77227-22777  
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**IN COOPERATION WITH:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**PREPARED BY:**

**ROGER HASEMAN, ASSISTANT DISTRICT ATTORNEY**



**H-GAC WOULD LIKE TO ACKNOWLEDGE CHUCK ROSENTHAL, HARRIS COUNTY DISTRICT  
ATTORNEY,  
FOR THE PROFESSIONAL GUIDANCE AND ASSISTANCE PROVIDED BY  
HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE**

# **HOUSTON-GALVESTON AREA COUNCIL ENVIRONMENTAL CIRCUIT RIDER PROJECT**

## **CRIMINAL ENVIRONMENTAL ENFORCEMENT AND PROSECUTION**

### **Overall Objective and Program Purpose**

Following the development of studies and training manuals on combating illegal dumping, the Houston-Galveston Area Council (H-GAC) implemented the Environmental Circuit Rider Project (ECRP) which is a two-year pilot program to provide assistance to the 13-counties within its region on the enforcement and prosecution of environmental offenses. The goals of the ECRP include providing counties with on-site environmental enforcement and prosecution training. This manual was developed as a tool to assist with environmental enforcement and prosecution in the following areas:

- Nuisances
- Illegal Dumping
- Illegal Discharge into or Adjacent to Waters of the State,
- Used Oil
- Air Quality

The manuals are not intended to present a complete listing of all the environmental statutes and regulations available for environmental enforcement and prosecution in these areas.

# **ROGER A. HASEMAN**

## **ASSISTANT DISTRICT ATTORNEY**

Roger A. Haseman is an Assistant District Attorney for the Harris County District Attorney's Office in Houston, Texas where he began his career as a prosecutor in 1982. He has been the Chief Prosecutor in the Environmental Crimes Division since 1991, where he is responsible for the state criminal prosecution of all environmental crimes in Harris County, including water, air, hazardous waste, used oil, medical waste and solid waste violations. He has advised and presented environmental seminars to law enforcement agencies and to the community regarding criminal violations of Texas environmental laws. He has also guest lectured to both law school and undergraduate classes, and has been a guest speaker at various Continuing Legal Education seminars around the state. Mr. Haseman is also an on-going instructor for the Advanced Environmental Crimes Training Program held at the Federal Law Enforcement Training Center in Glynco, Georgia. He currently represents the Texas District and County Attorneys Association as an Executive Member of the Southern Environmental Enforcement Network.

From 1982 to 1984, Mr. Haseman was a prosecutor in the trial bureau of the office, where he was lead counsel in over twenty-five felony jury trials and numerous misdemeanor jury trials, court trials, probation revocation hearings, and motion hearings.

From 1984 to 1987, Mr. Haseman was Chief Prosecutor in the Juvenile Division of the office, where he prosecuted juveniles accused of heinous crimes, including the certification of juveniles to stand trial as adults for their crimes. He also successfully represented Children's Protective Services in a multitude of cases affecting the parent-child relationship, and acted as lead counsel in two jury trials to terminate the parent-child relationship.

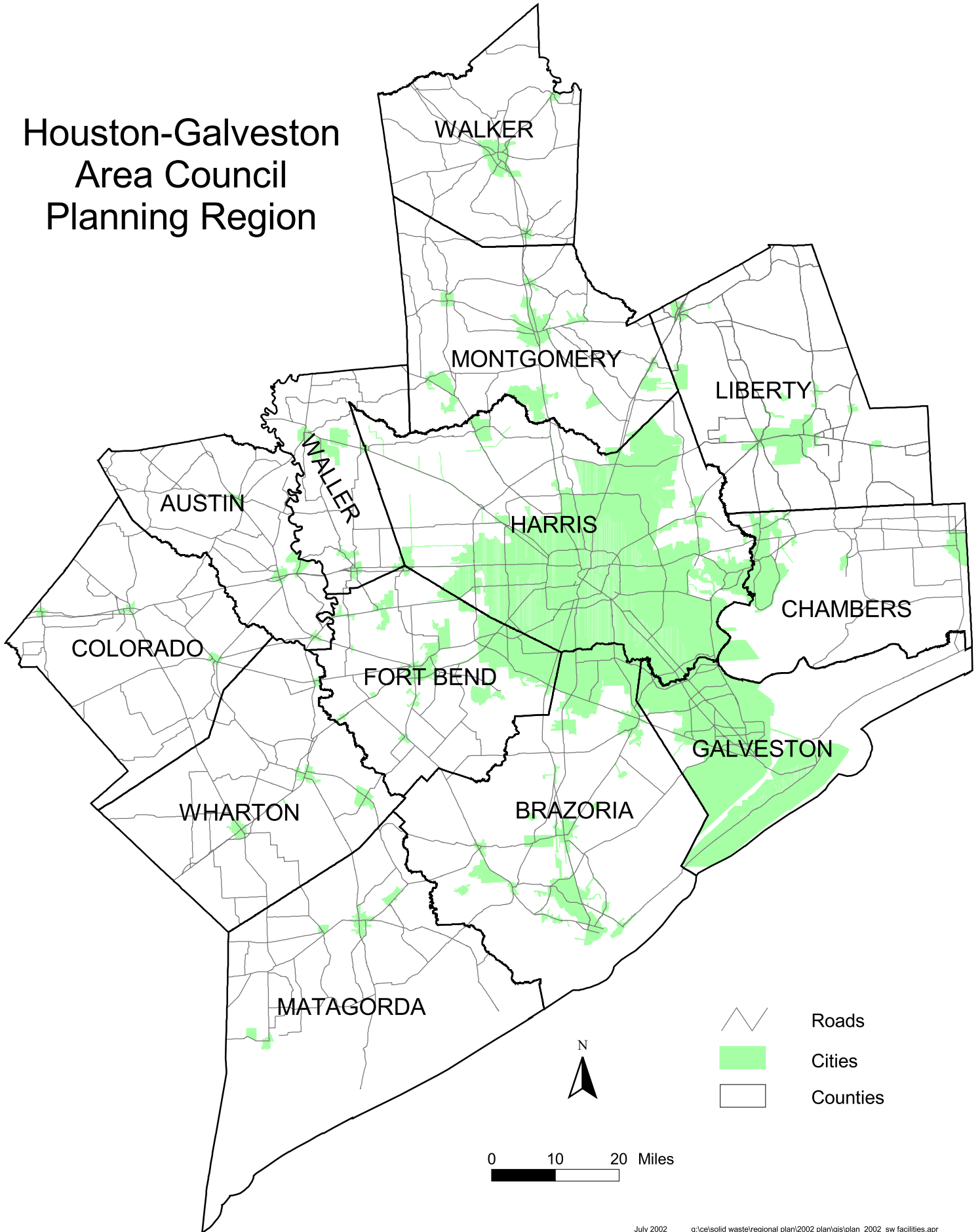
From 1987 to 1988, Mr. Haseman was assigned to the Post-Conviction Writ Section of the office, where he authored numerous reply briefs to post-conviction writs of habeas corpus, with special emphasis on capital murder writs. He also prepared and argued motions, and conducted writ hearings in state district courts as ordered by the Texas Court of Criminal Appeals.

From 1988 to 1989, Mr. Haseman was Chief Prosecutor in the Check Fraud Division of the office, where he initiated and supervised the investigation, filing, and prosecution of bank fraud and worthless check cases, with primary emphasis on check kiting schemes.

From 1990 to 1991, Mr. Haseman was assigned to the Appellate Division of the office, where he researched appellate issues in criminal cases, and authored numerous appellate briefs, many of which resulted in published court opinions. He also prepared and successfully presented oral arguments in the Texas Courts of Appeals and the Texas Court of Criminal Appeals.

Mr. Haseman earned his undergraduate degree, cum laude, in 1979 from Texas A&M University. He obtained his law degree from the University of Houston Law Center in 1982.

# Houston-Galveston Area Council Planning Region



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## **General Outline for Prosecuting an Environmental Crime**

On-view offense or Respond to citizen complaint.

Interview Complainant (unless anonymous) and any Witnesses thoroughly.

Interview any Suspects thoroughly.

At the Crime Scene, take photographs, measurements, and soil and/or water samples for analysis, if necessary.

If suspects are still at the scene, have them initiate a clean up of the site, including the hiring of an environmental contractor, if necessary. If suspects are gone and the violation is continuing or an immediate threat to the environment, have city or county environmental contractor dispatched to scene for site remediation.

(If Class C Misdemeanor offense, issue citation to appropriate person or persons).

If commercial entity involved in violation, prepare Grand Jury subpoenas for records or any other information necessary, unless voluntarily submitted by entity. Prepare Grand Jury subpoenas if any person or persons need to be brought before the Grand Jury for questioning (this has been rarely necessary).

Prepare and Execute Search Warrant at business location, if necessary.

Prepare Offense or Investigation Report, including Witness Statements, Suspect Statements, Analytical Data, Photographs, Charts, Scene Diagrams, etc. (anything and everything you want your DA to see).

Review submitted Case File (Prosecutor).

Identify and Determine potential offenses to be charged, and a list of potential suspects to be charged.

If suspects are represented by counsel from the investigatory stage, arrange a Pre-Charging meeting with counsel to determine if case can be resolved quickly. Prior to meeting with attorneys, meet with Case Investigator to determine an appropriate punishment or remedy.

Determine if Misdemeanor or Felony charges are appropriate in your case. If misdemeanor charges are to be filed, prepare Informations and Probable Cause Affidavits (unless suspects were arrested at the scene and charged immediately). If felony charges are to be filed, prepare Indictments. Also, if Corporate Defendants are involved, prepare appropriate Summons forms.

File misdemeanor charges in County Court or take felony charges into Grand Jury seeking indictments for District Court.

Once in Court, prepare Plea Agreements or prepare case for Trial.

## **NUISANCES**

# **ELEMENTS**

**TEXAS HEALTH AND SAFETY CODE**

**TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY**

**CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 341.001. Definitions**

In this chapter:

...

(5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.

**SUBCHAPTER B. NUISANCES AND GENERAL SANITATION**

**§ 341.011. Nuisance**

Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

...

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;



(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

...

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

### **§ 341.012. Abatement of Nuisance**

(a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

### **§ 341.013. Garbage, Refuse, and Other Waste**

(a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

#### SUBCHAPTER F. PENALTIES

##### **§ 341.091. Criminal Penalty**

(a) Misdemeanor fine of not less than \$10 or more than \$200.

(b) If prior conviction within a year, a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

**AFFIDAVIT FOR PROBABLE CAUSE – SEC. 343.011 (b) (3), (5)– PUBLIC NUISANCE**  
(Unsanitary Conditions) & (Unsafe Structure)

**STATE OF TEXAS**

**COUNTY OF HARRIS**

I Philip Moore, being duly sworn, on oath state that I have good reason to believe and do believe and charge before making complaint, that:

On or about   Date  , 2003, in Harris County Texas Precinct   , the Defendant, Defendant Name, **did then and there:**

- (3) Unlawfully cause, permit, and allow a public nuisance, namely maintain that creates an unsanitary condition likely to attract and harbor mosquitos, rodents, vermin; or disease-carrying pests.
- (5) Unlawfully cause, permit, and allow a public nuisance, namely maintain a building in a manner that is structurally unsafe or that constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment.

I Philip Moore, am a Harris County Official with the Harris County Public Health and Environmental Services. I personally observed the property located at Address, Lot ?, Block ?, Subdivision Name, Section ?, City, State Zi] owned by Defendant Name to cause, permit, and allow a public nuisance.

I personally notified the defendant by mail that was accepted on Date and that he/she would have to abate the nuisances. The nuisances have remained unabated until this date, which is more than thirty days from the date of said notice.

I know this Defendant to be responsible for the abatement of this nuisance because: (Choose One)

- (1) I know him/her by name and by sight and know him/her to be the owner of the property at the above address which is the location of the nuisances;
- (2) I know him/her by sight and have identified him/her by name from a Texas Driver's License photo that he/she showed to me, and because he/she told me that he/she was the owner and responsible for the property at the above address which are the nuisances' location;
- (3) I have checked the property records of Harris County for the above address, which are the nuisances' location, and learned that the Defendant is the owner of the said property.

**AFFIANT** \_\_\_\_\_

**SWORN TO AND SUBSCRIBED BEFORE ME ON** \_\_\_\_\_ **2003.**

\_\_\_\_\_  
**NOTARY PUBLIC, STATE OF TEXAS, CLERK OF THE COURT**

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

IN HARRIS COUNTY JUSTICE COURT  
PRECINCT

**THE STATE OF TEXAS**  
**VS.**

AFFIDAVIT NEIGHBORHOOD NUISANCE

Name  
Address  
City, State Zip

\_\_\_\_\_ File Date

**IN THE NAME AND BY AUTHORITY OF**

**THE STATE OF TEXAS**

Before me, the undersigned authority, this day personally appeared **Inspector's Name or Person Filing Charges**, who being sworn, deposes and says that **Defendant Name**, hereafter styled the defendant, heretofore on or about **Date** and before the filing of this complaint, in Precinct \_\_\_ of Harris County, Texas, did then and there unlawfully, knowingly, and intentionally allow weeds to grow on premises in a neighborhood if such weeds are located within 300 feet of another residence or commercial establishment, to wit: **Address, Lot ?, Block ?, Subdivision Name, City, State Zip**, contrary to law and against the peace and dignity of the State.

MAILING ADDRESS OF DEFENDANT:

\_\_\_\_\_  
Affiant: **Inspector Name** (713) 439-6263  
Harris County Public Health & Environmental Services  
2223 West Loop South  
Houston, Texas 77027

Sworn to and subscribed before me on \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Court, Justice of the Peace Precinct \_\_\_ Harris County, Texas.

## Public Nuisance Cases

### Constitutionality of Public Nuisance Statutes

***Kobos v. State***, 822 S.W.2d 779 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1992)

This is an appeal from a conviction for allowing a public nuisance in violation of Health and Safety Code Sections 343.011 & 343.012, (Junked or Abandoned Vehicles), in which Kobos claimed that the statute was unconstitutionally vague. Specifically, Kobos claimed that the terms “unused, discarded or abandoned” were vague because men of common intelligence may differ in their interpretations. Testimony indicated that Kobos used some of the vehicles on his property for spare parts. In finding that the statute was not vague and that Kobos violated the statute, the court of appeals held that motor vehicles were not manufactured for use as a spare parts inventory, but were intended for use as a method of transportation.

### Authority to Enter Premises

***Watts v. State***, 56 S.W.3d 694 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2001), *reversed on other grounds*, 99 S.W.3d 604 (Tex.Crim.App. 2003)

In this water pollution case, wherein there existed a pool of sewage on Watts’ property that was being channeled into a drainage ditch, Watts claimed that all evidence obtained during the search and seizure on his property should have been suppressed. Officers and inspectors entered the property, searched the area, and removed a soil sample without a search warrant or Watts’ consent. The trial court denied the motion to suppress evidence, holding that Section 343.024 of the Health and Safety Code, entitled “Authority to Enter Premises,” authorized the State to enter the premises to inspect and investigate the nuisance caused by the standing sewage on the property.

The Court of Appeals first noted that law enforcement authorities were merely attempting to contact Watts when the pool of sewage was first observed. Law enforcement agents have the same right as any other person to enter onto residential property and walk up to the front door. The officers did not enter the property with the purpose of conducting a search. Citing Section 343.024, the Court of Appeals stated that the legislature has authorized county officials charged with the enforcement of health, environmental, safety, or fire laws to enter any premises in an unincorporated area of the county at a reasonable time to inspect, investigate, or abate a public nuisance. Thus, the sewage sample was taken under the “plain view” exception as the officers were lawfully on the property, and it was immediately apparent to the inspectors and officers that they had evidence before them. “A search conducted to promote public health under chapter 343 of the Health and Safety Code is not invalidated simply because the fruits of the search and seizure resulted in a prosecution under the Water Code.”

# **ILLEGAL DUMPING OF LITTER AND SOLID WASTE**

# **ELEMENTS**

# TEXAS HEALTH AND SAFETY CODE

## CHAPTER 365. LITTER

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 365.001. Short Title

This chapter may be cited as the Texas Litter Abatement Act.

#### § 365.005. Venue and Recovery of Costs

- (a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.
- (b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

### SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

#### § 365.011. Definitions

In this subchapter:

...

- (3) “Commercial purpose” means the purpose of economic gain.

...

(5) “Dispose” and “dump” mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

- (6) “Litter” means:

- (A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or



(B) nondecayable solid waste, except ashes, that consists of:

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

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

...

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

...

(34) "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 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 ...; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

**§ 365.012. Illegal Dumping; Criminal Penalties**

**(a) Elements – Disposal Offense**

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

\* (Only applies to felony offenses)

**(b) Elements – Receiving Offense**

- (1) a person
- (2) *intentionally or knowingly or recklessly* \*
- (3) receives litter or other solid waste for disposal
- (4) at a place that is not an approved solid waste site,  
(regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person).

\* (Only applies to felony offenses)

**(c) Elements – Transport Offense**

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

\* (Only applies to felony offenses)

**Punishment Range**

**(d) CLASS C MISDEMEANOR –**

If litter or other solid waste  
weighs 5 pounds or less  
or has a volume of 5 gallons or less

(e) CLASS B MISDEMEANOR –

If litter or other solid waste weighs more than 5 pounds but less than 500 pounds or has a volume of more than 5 gallons but less than 100 cubic feet

(f) CLASS A MISDEMEANOR –

- (1) If litter or other solid waste weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or
- (2) If litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.

(g) STATE JAIL FELONY –

- (1) If litter or other solid waste weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;
- (2) If litter or other solid waste is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or
- (3) If litter or other solid waste is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

- (1) the litter or waste is generated on land the individual owns;
- (2) the litter or waste is not generated as a result of an activity related to a commercial purpose;
- (3) the disposal occurs on land the individual owns; and
- (4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

**§ 365.014. Application of Subchapter; Defenses; Presumptions**

(a) This subchapter does not apply to farmers:

- (1) in handling anything necessary to grow, handle, and care for livestock; or
- (2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

- (1) the storage, processing, or disposal took place on land owned or leased by the defendant;
- (2) the defendant received the litter or other solid waste from another person;
- (3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and
- (4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

**§ 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: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

**ALLEGATION: ILLEGAL DUMPING -- NON-COMMERCIAL (A)**  
(Transportation/Disposal/Receipt) [§365.012(a),(b)&(c), H&S Code]  
**NCIC CODE 5533/06**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

transport          litter          or          other          solid          waste,          namely,  
\_\_\_\_\_, having an aggregate  
weight of 500 pounds or more but less than 1,000 pounds, or a volume of 100 cubic feet or more  
but less than 200 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 or permit the disposal of litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of 500 pounds or more  
but less than 1,000 pounds, or a volume of 100 cubic feet or more but less than 200 cubic feet,  
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 or other solid waste, namely, \_\_\_\_\_  
\_\_\_\_\_, having an aggregate weight of 500 pounds or more but less than 1,000  
pounds, or a volume of 100 cubic feet or more but less than 200 cubic feet, for disposal at a  
place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_ ; Cause No. \_\_\_\_\_ ; CCCL No. \_\_

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

**WITNESSES**

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

2. \_\_\_\_\_ (Field Investigator)  
**REVISED 09/01/01**



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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

**ALLEGATION: ILLEGAL DUMPING -- NON-COMMERCIAL (B)**  
**(Transportation/Disposal) [§365.012(a)&(c), H&S Code]**  
**NCIC CODE 5533/00**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

transport          litter          or          other          solid          waste,          namely,  
\_\_\_\_\_,  
having an aggregate weight of more than five pounds but less than 500 pounds, or a volume of more than five gallons but 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 or permit the disposal of litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of more than five pounds but less than 500 pounds, or a volume of more than five gallons but less than 100 cubic feet, at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

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

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

WITNESSES

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

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

**REVISED 09/01/01**

# FORMS

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING -- NON-COMMERCIAL (C)**  
(Transportation/Disposal) [§365.012(a)&(c), H&S Code]  
**NCIC CODE 5533/00**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

transport          litter          or          other          solid          waste,          namely,  
\_\_\_\_\_,  
having an aggregate weight of five pounds or less, or a volume of five gallons or less, 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 or permit the disposal of litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of five pounds or  
less, or a volume of five gallons or less, at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ Justice Court No. \_\_\_\_

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

WITNESSES

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

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

**REVISED 10/08/03**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING** (Transportation, Disposal and Receipt)  
**Commercial Purpose** [§365.012(a),(b)&(c) H & S Code]  
**NCIC CODE 5533/06**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

for a commercial purpose, transport litter or other solid waste, namely, \_\_\_\_\_  
\_\_\_\_\_, having an aggregate weight of more than five  
pounds but less than 200 pounds, or a volume of more than five gallons but less than 200 cubic  
feet, to a place that was not an approved solid waste site for disposal at the site.

for a commercial purpose, dispose, allow or permit the disposal of litter or other solid waste,  
namely, \_\_\_\_\_, having an aggregate  
weight of more than five pounds but less than 200 pounds, or a volume of more than five gallons  
but less than 200 cubic feet, at a place that was not an approved solid waste site.

for a commercial purpose, receive litter or other solid waste, namely,  
\_\_\_\_\_, having an aggregate weight of more than five  
pounds but less than 200 pounds, or a volume of more than five gallons but less than 200 cubic  
feet, for disposal at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

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

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

WITNESSES

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

**REVISED 09/01/01**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

**ALLEGATION: ILLEGAL DUMPING -- NON-COMMERCIAL SJF**  
(Transportation/Disposal/Receipt) [§365.012(a),(b)&(c), H&S Code]  
**NCIC CODE 5533 07**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

intentionally or knowingly transport litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of 1,000 pounds or more, or a  
volume of 200 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

intentionally or knowingly dispose, allow or permit the disposal of litter or other solid waste,  
namely, \_\_\_\_\_, having an aggregate  
weight of 1,000 pounds or more, or a volume of 200 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

intentionally or knowingly receive litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of 1,000 pounds or  
more, or a volume of 200 cubic feet or more, for disposal at a place that was not an approved  
solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_; Cause No. \_\_\_\_\_; DISTRICT COURT NO.  
\_\_\_\_\_

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

WITNESSES



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

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

**REVISED 09/01/01**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING - SJF** (Transportation, Disposal and Receipt)  
**Commercial Purpose** [§365.012(a),(b)&(c) H & S Code]  
**NCIC CODE 5533 07**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

for a commercial purpose, intentionally or knowingly transport litter or other solid waste, namely, \_\_\_\_\_, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, to a place that was not an approved solid waste site for disposal at the site.

for a commercial purpose, intentionally or knowingly dispose, allow or permit the disposal of litter or other solid waste, namely, \_\_\_\_\_, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, at a place that was not an approved solid waste site.

for a commercial purpose, intentionally or knowingly receive litter or other solid waste, namely, \_\_\_\_\_, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, for disposal at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ DISTRICT COURT NO. \_\_\_\_\_

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

WITNESSES

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

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

**REVISED 09/01/01**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING - SJF** (Transportation, Disposal and Receipt)  
**Barrel or Drum** [§365.012(a),(b)&(c) H & S Code]  
**NCIC CODE 5533 07**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

for a commercial purpose, intentionally or knowingly transport litter or other solid waste, namely, \_\_\_\_\_, to a place that was not an approved solid waste site for disposal at the site, and the litter or other solid waste was contained in a closed barrel or drum.

for a commercial purpose, intentionally or knowingly dispose, allow or permit the disposal of litter or other solid waste, namely, \_\_\_\_\_, at a place that was not an approved solid waste site, and the litter or other solid waste was contained in a closed barrel or drum.

for a commercial purpose, intentionally or knowingly receive litter or other solid waste, namely, \_\_\_\_\_, for disposal at a place that was not an approved solid waste site, and the litter or other solid waste was contained in a closed barrel or drum.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ DISTRICT COURT NO. \_\_\_\_\_

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

WITNESSES

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

**REVISED 09/01/01**

## Illegal Dumping Cases

### Constitutionality of the Dumping Statute

*Acosta v. State*, 972 S.W.2d 95 (Tex.App.—El Paso 1998)

Acosta contended that the statutory definition of “solid waste” was unconstitutionally vague. Specifically, since the statutory definition excepts “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,” Acosta argued that the exception for dirt and rock rendered the definition unconstitutionally vague because the phrase “used to fill land” is undefined and susceptible to varying interpretations.

Acosta testified that he and his son used his pickup truck to take dirt from a home under construction to another construction site. Acosta and his son did not place the dirt and rock directly on a construction area in order to make the land suitable for the construction of surface improvements. According to Acosta, he and his son merely left the dirt and rock near some that was already there. In affirming the conviction, the Court of Appeals stated, “[w]e do not find that a person of ordinary intelligence would mistake the specific statutory exception for fill dirt as an open invitation to dump dirt and rock at any convenient construction site.”

### Constitutionality of Strict Liability

*Ex parte Weise*, 23 S.W.3d 449 (Tex.App.—Houston [1<sup>st</sup> Dist.] 2000), *reversed on other grounds*, 55 S.W.3d 617 (Tex.Crim.App. 2001)

In this appeal, the Court of Appeals addressed the issue of whether a statute prohibiting the dumping of trash is unconstitutional for not requiring proof of a culpable mental state. The Court of Appeals noted that the illegal dumping statute *was* devoid of express language that prescribes a culpable mental state, and for various other reasons held that it was constrained to hold that a culpable mental state of at least “recklessly” was required under the statute.

**ILLEGAL DISCHARGE INTO OR ADJACENT TO  
WATERS OF THE STATE**

# **ELEMENTS**



TEXAS WATER CODE

CHAPTER 26. WATER QUALITY CONTROL

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

§ 26.001. Definitions

As used in this chapter:

...

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

...

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

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

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

(A) includes:

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

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

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

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

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

...

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

...

(25) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

**TEXAS WATER CODE**

**CHAPTER 7. ENFORCEMENT**

**SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES**

**§ 7.141. Definitions**

In this subchapter:

...

(2) “Corporation” and “association” have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.

**§ 7.145. Intentional or Knowing Unauthorized Discharge**

(a) **Elements**

- (1) a person
- (2) intentionally or knowingly with respect to conduct
- (3) discharges or allows the discharge of
- (4) a waste or pollutant:
  - (5a) into or adjacent to water in the State
  - (6a) that causes or threatens to cause water pollution
  - (7a) unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency;

or

- (5b) from a point source
- (6b) in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

[See Chapter 26.121. Unauthorized Discharges Prohibited]

## **Punishment Range**

### **(b) Individual**

- a fine of not less than \$1,000 or more than \$100,000
- confinement in prison not to exceed five years
- both fine and confinement

### **(c) Other than Individual**

- a fine not less than \$1,000 nor more than \$250,000

Enhancement Provision: **§ 7.188**

If previous conviction under **§ 7.145**, the MAXIMUM punishment with respect to both fine and confinement is DOUBLED.

## **§ 7.147. Unauthorized Discharge (STRICT LIABILITY)**

### **(a) Elements**

- (1) a person
- (2) discharges or allows the discharge of
- (3) any waste or pollutant
- (4) into any water in the State
- (5) that causes or threatens to cause water pollution
- (6) unless the waste or pollutant is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.

## **Punishment Range**

### **(c) Individual**

- a fine not less than \$1,000 nor more than \$50,000
- confinement in jail not to exceed one year
- both fine and confinement

### **(d) Other than Individual**

- a fine not less than \$1,000 nor more than \$100,000

Enhancement: **§ 7.188** – Maximums Doubled.

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **WATER POLLUTION (No Permit) FELONY - Water Code § 7.145(a).**  
**NCIC CODE 7400 39**

intentionally or knowingly discharge or allow the discharge of a waste or pollutant, namely (a) \_\_\_\_\_, into or adjacent to water in the State, namely (b) \_\_\_\_\_, that caused or threatened to cause water pollution, said discharge not being in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency, namely the Texas Commission on Environmental Quality.

intentionally or knowingly discharge or allow the discharge of a waste or pollutant, namely (a) \_\_\_\_\_, from a point source, namely (c) \_\_\_\_\_, in violation of Water Code (d) \_\_\_\_\_, prohibiting the unauthorized discharge of (a) \_\_\_\_\_ (e) \_\_\_\_\_ any water in the state.

FILL-INS:

(a) **Choose:** sewage, industrial waste, recreational waste, agricultural waste or "waste, namely \_\_\_\_\_"

(b) Describe the body of water

(c) Identify Point Source

(d) **Choose:** §26.121(a)(1) or §26.121(d)

(e) **Choose:** "into" or " into or adjacent to"

---

CASE FILED: \_\_\_\_\_, 20\_\_

CAUSE NUMBER \_\_\_\_\_, DISTRICT COURT NO. \_\_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_ SETTING DATE: \_\_\_\_\_

**REVISED 06/25/2004**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **WATER POLLUTION - FELONY (Permit) [Water Code §7.145(a)]**  
**NCIC CODE** \_\_\_\_\_

intentionally or knowingly discharge or allow the discharge of a waste or pollutant, namely, (a) \_\_\_\_\_, into or adjacent to water in the state, namely, (b) \_\_\_\_\_ that caused or threatened to cause water pollution, said discharge not being in strict compliance with the limits for (c) \_\_\_\_\_ stated in Permit No. (d) \_\_\_\_\_, and said discharge not being pursuant to an order issued or a rule adopted by the Texas Natural Resource Conservation Commission.

intentionally or knowingly discharge or allow the discharge of a waste or pollutant, namely, (a) \_\_\_\_\_, from a point source, namely, (e) \_\_\_\_\_, in violation of the permit limits for (c) \_\_\_\_\_ stated in Permit No. (d) \_\_\_\_\_ issued by the Texas Natural Resource Conservation Commission.

**FILL-INS:**

- (a) **Choose:** sewage, industrial waste, recreational waste, agricultural waste or "waste, namely \_\_\_\_\_"
- (b) Describe body of water
- (c) Requirement indicated in Violation Notice
- (d) Permit No.: \_\_\_\_\_
- (e) **Choose:** a sewage treatment plant, a wastewater treatment plant, or other

CASE FILED: \_\_\_\_\_, 20\_\_ CAUSE NO. \_\_\_\_\_, DISTRICT COURT NO. \_\_\_\_\_

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

SETTING DATE: \_\_\_\_\_

**REVISED 05/27/2001**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **WATER POLLUTION (NO PERMIT-S/L) WATER CODE §7.147(a).**  
**NCIC CODE 5532/01**

**PENALTY: Individual -- 1 year/\$1,000 to \$50,000**  
**Corporation -- \$1,000 to \$100,000**

discharge or allow the discharge of a waste or pollutant, namely (a) \_\_\_\_\_, into water in the State, namely (b) \_\_\_\_\_ that caused or threatened to cause water pollution, said discharge not being in strict compliance with a required permit or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency, namely, the Texas Commission on Environmental Quality.

FILL-INS:

(a) **Choose:** sewage, industrial waste, recreational waste, agricultural waste, or other waste, namely...

(b) Describe body of water

\_\_\_\_\_  
CASE FILED: \_\_\_\_\_, 20\_\_\_\_  
CAUSE NUMBER: \_\_\_\_\_; CCCL NO. \_\_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_  
SETTING DATE: \_\_\_\_\_

WITNESSES: (1) \_\_\_\_\_ (Field Investigator)  
(2) \_\_\_\_\_ (Laboratory)

DOCUMENTARY EVIDENCE:

- (1) Negative Certification from TCEQ  
Req'd \_\_\_\_\_; Rec'd \_\_\_\_\_; Filed in Ct. \_\_\_\_\_
- (2) Certified copy of lab results and sample custody records  
Requested \_\_\_\_\_; Received \_\_\_\_\_



**REVISED 08/16/04**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **WATER POLLUTION (PERMIT-S/L) WATER CODE §7.147(a).**  
**NCIC CODE 5532/01**

**PENALTY: Individual -- 1 year/\$1,000 to \$50,000**  
**Corporation -- \$1,000 to \$100,000**

discharge or allow the discharge of a waste and pollutant, namely (a) \_\_\_\_\_, into water in the State, namely (b) \_\_\_\_\_ that caused or threatened to cause water pollution, said discharge not being in strict compliance with the limits for (c) \_\_\_\_\_ stated in Permit No. (d) \_\_\_\_\_, and said discharge not being pursuant to a valid and currently effective order issued or rule adopted by the appropriate regulatory agency, namely, the Texas Natural Resource Conservation Commission.

FILL-INS:

- (a) **Choose:** sewage, industrial waste, recreational waste, agricultural waste, or other waste, namely \_\_\_\_\_
- (b) Describe body of water
- (c) Requirement indicated in Violation Notice
- (d) Permit No.: \_\_\_\_\_

\_\_\_\_\_  
CASE FILED: \_\_\_\_\_, 20\_\_\_\_  
CAUSE NUMBER: \_\_\_\_\_; CCCL NO. \_\_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_  
SETTING DATE: \_\_\_\_\_

DOCUMENTARY EVIDENCE:

- (1) Negative Certification from TNRCC  
Req'd \_\_\_\_\_; Rec'd \_\_\_\_\_; Filed in Ct. \_\_\_\_\_

**REVISED 08/21/02**

## Water Pollution Cases

### Water in the State

*American Plant Food Corporation v. State*, 587 S.W.2d 679 (Tex.Crim.App. 1979)

Where the evidence showed that a pollutant escaped from American Plant Food's premises onto an adjacent field and formed a large pool that flowed into a drainage ditch containing water, the Court of Criminal Appeals held that it was readily apparent from the broad definitions of water and "water in the state" that the drainage ditch water was one of the types of surface water the legislature sought to protect.

### Water in the State/Judicial Notice

*Watts v. State*, 56 S.W.3d 694 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2001), *reversed and remanded*, 99 S.W.3d 604 (Tex.Crim.App. 2003), *reversed on rehearing after remand*, 140 S.W.3d 860 (No. 14-99-00811-CR) (Tex.App.—Houston [14<sup>th</sup> Dist.] 2004, pet.filed)

In this water pollution case, the trial court took judicial notice of the holding in *American Plant Food* and instructed the jury that a "drainage ditch" is a watercourse that falls within the scope of the Water Code's statutory definition of "water" and "water in the state." The Court of Appeals found no error in the taking of judicial notice of a superior court's interpretation of a statute. Since the instruction was an accurate statement of the law, it was not a comment on the weight of the evidence. The conviction was affirmed.

The Court of Criminal Appeals held that the trial judge committed error by commenting on the weight of the evidence, reversed the conviction and remanded the case to the court of appeals to conduct a harm analysis. The Court noted that in *American Plant Food*, it did not hold that *all* drainage ditches constitute water in the state, as a matter of law.

On rehearing after remand, the Court of Appeals conducted a harm analysis. In developing case analysis dating back to 1916, the Court held that the trial judge's instruction was "entirely accurate." A drainage ditch retains its character as a "watercourse" during flood or drought, whether wet or dry. "Because the bed of a watercourse may be polluted without regard to whether it currently contains liquid water, the trial court's instruction was a correct statement of the law." However, the Court pointed out that Watts attempted to persuade jurors that a drainage ditch was not "water in the state." While recognizing that the argument had no legal merit since the Court was persuaded that a drainage ditch is water in the state as a matter of law, the Court inexplicably found that without the benefit of the trial court's instruction, it was conceivable that Watts might have induced the jury to believe otherwise and, therefore, he was potentially prejudiced and harmed by the trial court's instruction.

The Court of Appeals reversed the conviction and remanded the case for a new trial. The State has filed a Petition for Discretionary Review in the Court of Criminal Appeals.

# **LEAD-ACID BATTERIES**

# **ELEMENTS**

**§ 7.185. Knowing or Intentional Unauthorized Disposal of Lead-Acid Batteries**

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

Enhancement: **§ 7.188** – Maximums Doubled

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

**ALLEGATION: UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES**  
[§7.185, TEXAS WATER CODE; §361.451(a), H&S CODE]  
**CLASS A MISDEMEANOR -- NCIC CODE 6205 05**

intentionally or knowingly dispose of a lead-acid battery on land located near \_\_\_\_\_  
\_\_\_\_\_, and the Defendant failed to deliver the discarded battery to a battery  
retailer or wholesaler, a secondary lead smelter, or to an authorized collection or recycling  
facility.

CASE FILED: \_\_\_\_\_, 20\_\_

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

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

**WITNESSES**

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

**REVISED 11/03/00**



## **USED OIL**

# **ELEMENTS**

**TEXAS HEALTH AND SAFETY CODE**

**CHAPTER 371.**

**TEXAS USED OIL COLLECTION, MANAGEMENT, AND RECYCLING ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 371.002. Findings**

The legislature finds that:

...

- (3) improper disposal of used oil is a significant environmental problem and a waste of a potentially valuable energy resource;

...

- (8) the current used oil and used oil filter program in this state imposes more stringent management requirements than the regulations of the United States Environmental Protection Agency;

**§ 371.003. Definitions**

In this chapter:

...

- (17) "Used Oil" means oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

**TEXAS WATER CODE**  
**CHAPTER 7. ENFORCEMENT**

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

**§ 7.176. Violations Relating to Handling of Used Oil**

(a)(1) -- Discharge of used oil into water.

**Elements**

- (1) a person
- (2) intentionally discharges used oil
- (3) into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water.

(a)(2) -- Disposal of used oil on land or in landfills.

**Elements**

- (1) a person
- (2) knowingly mixes or commingles used oil
- (3) with solid waste that is to be disposed of in landfills
- (4) unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals

or

- (1) a person
- (2) knowingly (directly) disposes of used oil
- (3) on land or in landfills.

(a)(3) -- Used oil management.

**Elements**

- (1) a person
- (2) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles
- (3) any used oil within the state:
  - (A) in violation of standards or rules for the management of used oil;
  - or
  - (B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter.

(See Standards for the Management of Used Oil in 40 CFR, Chapter 1, Part 279 Adopted by TCEQ Rules, Chapter 324 – Used Oil Standards.)

(a)(4) -- Application of used oil to roads or lands.

**Elements**

- (1) a person
- (2) intentionally applies used oil
- (3) to roads or land
- (4) for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment.

(a)(5) -- Violation of TCEQ order.

**Elements**

- (1) a person
- (2) violates an order of the commission
- (3) to cease and desist
- (4) an activity prohibited by this section
- (5) or a rule applicable to a prohibited activity.

(a)(6) -- False statements or representations.

**Elements**

- (1) a person
- (2) intentionally makes a false statement or representation
- (3) in an application, label, manifest, record, report, permit, or other document
- (4) filed, maintained, or used for purposes of program compliance.

EXCEPTIONS

§ 7.176(b). It is an exception to the application of this section that a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes. (Affirmative Defense under §7.254).

§ 7.176(c). It is an exception to the application of Subsection (a)(2) that the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

§ 7.176(d). **Criminal Penalties**

(1) Individual

- a fine of not less than \$1,000 or more than \$50,000
- imprisonment for a term not to exceed five years
- or both the fine and the imprisonment.

(2) Corporation/Association -- Texas Penal Code §12.51.

- a fine not to exceed \$20,000; or
- a fine not to exceed \$50,000 if, as a result of an offense, an individual suffers serious bodily injury or death; or
- a fine not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater, if a court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss through the commission of the offense.

**§ 7.176(d). Enhancement**

(1) Individual

- a fine of not less than \$1,000 or more than \$100,000
- imprisonment for a term not to exceed 15 years
- or both the fine and imprisonment.

(2) Corporation/Association

**MAXIMUM FINE IS DOUBLED! -- § 7.188.**

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

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_

AGENCY: \_\_\_\_\_

ALLEGATION: Used Oil Act Violation  
**Texas Water Code Sec. 7.176(a)(1).**  
**NCIC CODE 6205/00**

intentionally discharge used oil into a (a) \_\_\_\_\_,  
namely, (b) \_\_\_\_\_.

FILL-INS: (a) sewer, drainage system, septic tank, surface water,  
groundwater, watercourse, or marine water

(b) Identify body of water

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_, \_\_\_\_\_ District Court

SERVICE OF PROCESS: \_\_\_\_\_ SETTING DATE: \_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_ (Field investigator)

2. \_\_\_\_\_ (Laboratory)

3. \_\_\_\_\_



**Revised 02/19/02**

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

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

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

\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_

AGENCY: \_\_\_\_\_

ALLEGATION: Used Oil Act Violation, **Texas Water Code §7.176(a)(2).**  
**NCIC CODE 6205/00**

(FELONY OFFENSE: \$1000 TO \$50,000/UP TO FIVE YEARS IMPRISONMENT)

knowingly dispose of used oil on land located near (a) \_\_\_\_\_.

FILL-IN: (a) Identify location

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_, \_\_\_\_\_ District Court

SERVICE OF PROCESS: \_\_\_\_\_ SETTING DATE: \_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_ (Field investigator)

2. \_\_\_\_\_ (Laboratory)

3. \_\_\_\_\_

**REVISED 03/03/2004**

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

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

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

\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_

AGENCY: \_\_\_\_\_

ALLEGATION: Used Oil Act Violation, **Texas Water Code §7.176(a)(2).**  
**NCIC CODE 6205/00**

(FELONY OFFENSE: \$1000 TO \$50,000/UP TO FIVE YEARS IMPRISONMENT)

knowingly dispose of used oil on land located near (a) \_\_\_\_\_, and the disposal occurred directly in that the used oil was not mixed or commingled with solid waste to be disposed of in a landfill.

intentionally apply used oil to land located near (a) \_\_\_\_\_ for weed abatement.

FILL-IN: (a) Identify location

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_, \_\_\_\_\_ District Court

SERVICE OF PROCESS: \_\_\_\_\_ SETTING DATE: \_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_ (Field investigator)

2. \_\_\_\_\_ (Laboratory)

3. \_\_\_\_\_

**REVISED 05/21/2003**

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

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

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

\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_

AGENCY: \_\_\_\_\_

ALLEGATION: Used Oil Act Violation, **Texas Water Code §7.176(a)(3)(A).**

**NCIC CODE 6205/00**

(FELONY OFFENSE: \$1000 TO \$50,000/UP TO FIVE YEARS IMPRISONMENT)

knowingly (a) \_\_\_\_\_ used oil at a location near (b) \_\_\_\_\_ in violation of the standards for the management of used oil, namely, the Defendant stored used oil in containers that had apparent structural defects or deterioration and were leaking, and/or the Defendant stored used oil in containers that were not labeled and marked clearly with the words "Used Oil."

(a) transport, treat, store, dispose of, recycle, cause to be transported, or otherwise handle

(b) state location

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_, \_\_\_\_\_ District Court

SERVICE OF PROCESS: \_\_\_\_\_ SETTING DATE: \_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_ (Field investigator)

2. \_\_\_\_\_ (Laboratory)

3. \_\_\_\_\_

**REVISED 07/13/2000**

## Used Oil Cases

### Exceptions to Statute/Sufficiency of the Evidence

**Tarlton v. State**, 93 S.W.3d 168 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2002, pet.ref'd)

On appeal, Tarlton complained that the trial court erred in denying his motion to set aside the indictment because it failed to negate the two exceptions in the statute. The State must negate the existence of any exception to an offense in the indictment, and this negation constitutes an element of the offense. The State need not expressly negate an exception in the indictment, as it may do so implicitly. The Court of Appeals held that the indictment implicitly negated both exceptions set forth in Section 7.176. By alleging that Tarlton acted knowingly, the State negated the first exception—that the statute does not apply to one who “*unknowingly* disposes” of certain waste. Since the indictment also alleged that Tarlton disposed of used oil “on land,” the State implicitly negated the second exception—that Section 7.176(a)(2) does not apply if “the mixing or commingling of used oil with solid waste that is to be disposed of *in landfills* is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.”

Tarlton also challenged the sufficiency of the evidence to support his conviction based upon these two exceptions. The Court of Appeals held that the evidence was sufficient to show that Tarlton knowingly disposed of used oil on land, and not in a landfill.

### Double Jeopardy/Collateral Estoppel

**Ex parte Tarlton**, 105 S.W.3d 295 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2003)

After the trial in the above referenced case, which resulted in an instructed verdict of not guilty on several charges, Tarlton was charged with water pollution for the same conduct. He filed an application for pretrial writ of habeas corpus on the grounds that the new prosecution was barred by double jeopardy and collateral estoppel. The trial court denied Tarlton’s application.

The Court of Appeals held that water pollution is not a lesser-included offense of disposal of used oil or hazardous waste. Water pollution requires proof that the substance was introduced into the water and caused water pollution. Disposal of oil or hazardous waste requires proof that the substance was discharged onto land. Because the two offenses contain different elements, and because each offense requires proof of an element that the other does not, Tarlton’s jeopardy rights were not violated.

Collateral estoppel precludes a subsequent prosecution only if the matters to be relitigated dictated the previous acquittal, and the fact finder could not rationally have based its verdict on an issue other than the issue the defendant seeks to foreclose. After a review of the evidence from Tarlton’s first trial, the Court of Appeals held that the trial court

could rationally have based its verdict of not guilty on issues other than those Tarlton now seeks to foreclose. Therefore, the acquittal in the first trial does not estop the State from trying Tarlton for water pollution.

Disposal/Limitations/Directly

***L.B. Foster Company v. State***, 106 S.W.3d 194 (Tex.App.—Houston [1<sup>st</sup> Dist.] 2003, pet.ref'd)

In a prosecution for the disposal of hazardous waste and used oil on land, the Court of Appeals rejected the State's theory of passive migration of the contaminants through the soil as tolling the statute of limitations until the site is remediated. The Court held that for purposes of criminal prosecutions under the Water Code, the term "disposal" requires more than the passive migration of waste through the soil unaided by affirmative human conduct. Some form of affirmative human conduct must accompany a disposal for it to rise to the level of criminal culpability.

Pursuant to Section 7.176(a)(2), a person commits an offense if the person knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills.... L.B. Foster argued on appeal that the evidence failed to show a *direct* disposal of used oil. The Court of Appeals held that Section 7.176(a)(2) defines two offenses. "Read in context and according to rules of grammar and usage, the term "directly" signals to the reader that a distinction exists between the two offenses." The Court concluded that evidence supporting a conviction under Section 7.176(a)(2) will not be deemed insufficient merely because the State fails to show that the defendant "directly" i.e., without an intervening agent, poured or dumped used oil on the ground.

# AIR QUALITY



# **ELEMENTS**

## TEXAS HEALTH AND SAFETY CODE

### CHAPTER 382. CLEAN AIR ACT

#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 382.002. Policy and Purpose

- (a) The policy of this state and the purpose of this chapter are to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.
- (b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas Natural Resource Conservation Commission result in expeditious initiation of enforcement actions as provided by this chapter.

##### § 382.003. Definitions

In this chapter:

- ...
- (2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.
- (3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:
  - (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or
  - (B) interfere with the normal use or enjoyment of animal life, vegetation, or property.
- ...
- (10) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

**TEXAS WATER CODE**  
**CHAPTER 7. ENFORCEMENT**

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

**§ 7.177. Violations of Clean Air Act**

(a) **Elements**

- (1) a person
- (2) intentionally or knowingly, with respect to conduct, violates:
- (3) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

(b) **Punishment Range – Individual**

- a fine not less than \$1,000 nor more than \$50,000
- confinement not to exceed 180 days
- both fine and confinement

(c) **Punishment Range -- Other than an Individual**

- a fine not less than \$1,000 nor more than \$100,000

**§ 7.188. Enhancement (Repeat Offenses)**

MAXIMUM fine and imprisonment DOUBLED!

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REGULATIONS**  
**(TITLE 30, TEXAS ADMINISTRATIVE CODE)**

**Chapter 101.** General Rules

**Rule 101.4.** Nuisance

No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

**Chapter 111.** Control of Air Pollution from Visible Emissions and Particulate Matter

SUBCHAPTER B.

OUTDOOR BURNING

**Rule 111.201.** General Prohibition

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

**Rule 111.205.** Exception for Fire Training

**Rule 111.207.** Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth

**Rule 111.209.** Exception for Disposal Fires

- (1) Domestic waste burning
- (2) Diseased animal carcass burning
- (3) On-site burning of trees, brush, and plant growth
- (4) Crop residue burning
- (5) Brush, trees, and plant growth (City or County Govt.)

**Rule 111.211.** Exception for Prescribed Burn

**Rule 111.213.** Exception for Hydrocarbon Burning

**Rule 111.215.** Executive Director Approval of Otherwise Prohibited Outdoor Burning

**Rule 111.219.** General Requirements for Allowable Outdoor Burning

**Rule 111.221.** Responsibility for Consequences of Outdoor Burning

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **AIR POLLUTION (Nuisance) [§7.177(a)(5) TWC]**  
**NCIC CODE 5532 00**

intentionally and knowingly discharge an air contaminant, namely (a) \_\_\_\_\_, in such  
concentration \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ such \_\_\_\_\_ duration  
(b) \_\_\_\_\_.

FILL-INS:

a. Choose: particulate matter, dust, fumes, gas, mist, smoke, vapor, odor,  
or "a combination of \_\_\_\_\_"

b. Insert One or More, including Sub-Parts:

1) as may tend to be injurious to and to adversely affect

(A) human health and welfare of \_\_\_\_\_ (CW)

(B) animal life

(C) vegetation

(D) property

**or** 2) as to interfere with the normal use and enjoyment of

(A) animal life

(B) vegetation

(C) property

3) of \_\_\_\_\_ (Name of CW)

CASE FILED: \_\_\_\_\_, 20\_\_ ; Cause No. \_\_\_\_\_; CCCL No. \_\_

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

**REVISED 08/20/2002**

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

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

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **AIR POLLUTION (Outdoor Burning)**  
30 TAC, § 111.201 et.al. [§7.177(a)(5) TWC]  
**NCIC CODE 5532 00**

intentionally and knowingly cause, allow, and permit outdoor burning within the State of Texas in violation of Title 30, Texas Administrative Code Rule §111.201, and the outdoor burning was not authorized by the Executive Director of the Texas Natural Resource Conservation Commission, nor was the outdoor burning authorized by any exception contained in Title 30, Texas Administrative Code Rule §111.

CASE FILED: \_\_\_\_\_, 20\_\_

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

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

SETTING DATE: \_\_\_\_\_

WITNESSES

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

DOCUMENTARY EVIDENCE:

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

Negative cert from \_\_\_\_\_  
TNRCC

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

**REVISED 09/01/97**



## **Air Quality Cases**

Strict Liability/Constitutionality of the Statute

*Exxon Company, U.S.A. v. State*, 646 S.W.2d 536 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1982, pet.ref'd)

The pollutant was a catalytic dust released into the air from the Exxon refinery in Baytown, Texas. This dust settled over a wide area, interfering with other persons' use and enjoyment of their property. The Court of Appeals held that in cases involving air pollution, especially where corporations are involved, considering the risks to public health, to require anything other than a strict liability standard would be to deny the public the right to be protected from hazardous activities.

Exxon also contended that the definition of "air pollution" was unconstitutionally vague. Here, the theory of prosecution was "interference with the normal use and enjoyment of property." The Court of Appeals held that this phrase was not unconstitutionally vague.

Permit Exemption

*Southwest Utilities, Inc. v. State*, 822 S.W.2d 751 (Tex.App.—Corpus Christi 1992)

This was an odor nuisance case. Southwest Utilities claimed on appeal that since its facility was exempt from permit requirements, it could not be convicted of air pollution. The Court of Appeals rejected this argument, holding that an exemption status does not eliminate the requirement that emission of air contaminants must be in compliance with a variance or order of the Air Control Board (now the Texas Commission on Environmental Quality).

## **MISCELLANEOUS PROVISIONS**

# **PROVISIONS**

**§ 7.068. Full and Complete Satisfaction** (Statutory Jeopardy)

Payment of an administrative penalty under this subchapter is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

**§ 7.186. Separate Offenses**

Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

**§ 7.188. Repeat Offenses**

If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

**§ 7.189. Venue**

Venue for prosecution of an alleged violation under this subchapter is in:

- (1) the county in which the violation is alleged to have occurred;
- (2) the county where the defendant resides;
- (3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; or
- (4) Travis County.

**§ 7.190. Disposition of Fines**

A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

**§ 7.200. Effect on Certain Other Laws**

Conduct punishable as an offense under this subchapter that is also punishable under another law may be prosecuted under either law.

**§ 7.201. Defense Excluded**

It is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

NO. 992,719

THE STATE OF TEXAS                    §        IN THE 262<sup>ND</sup> DISTRICT COURT  
VS.    §    OF  
GARDNER ASPHALT, INC.                §    HARRIS COUNTY, T E X A S

**FELONY PLEA OF NOLO CONTENDERE BY A CORPORATION**

COMES NOW THE DEFENDANT in this cause, **Gardner Asphalt, Inc.**, a corporation registered with the Texas Secretary of State, appearing by counsel M. Benjamin Cowan, a licensed Texas attorney, pursuant to TEX.CODE CRIM.PROC. article 17A.07(a). Prior to entering a plea herein, the Defendant represents through counsel that:

1. The Defendant understands that it is charged with the felony offense of **Water Pollution**, pursuant to Chapter 7.145, Texas Water Code, for which the punishment is a fine of not less than one-thousand dollars (\$1,000) or more than two-hundred-fifty-thousand dollars (\$250,000).
2. The Defendant understands that it has the right to a jury trial, which includes the right to have punishment assessed by a jury; the right to compulsory process for obtaining witnesses in its favor; the right to confront and cross-examine witnesses against it; the right to be arraigned and have the charges against it read in open court; the right to ten full days after arraignment before the day trial begins; the right to appointed counsel if unable to afford counsel; and the right to have ten days after the appointment of any attorney before entering a plea.
3. The Defendant understands that a plea of nolo contendere has the same legal effect as a guilty plea, except that a nolo contendere plea may not be used against the Defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution in this cause is based; that upon a plea of nolo contendere, with a waiver of trial by jury, punishment may be assessed by the Court upon the introduction of evidence of the Defendant's guilt by the State; that if the Defendant is found guilty, this case may be used as evidence to enhance punishment if the Defendant is later convicted of another offense; that the Court shall notify both the Attorney General of Texas and the Texas Commission on Environmental Quality in writing of this conviction when it becomes final and unappealable; and that if the Court does not exceed the agreed recommendation of the State in assessing punishment, then the Defendant's right to appeal its conviction will be limited to matters raised by written motion and ruled upon before trial unless the Court gives permission to raise other matters.

The undersigned attorney, M. Benjamin Cowan, acknowledges that he represents the Defendant, **Gardner Asphalt, Inc.**, and that he has discussed the case with officials of the Defendant who have the authority to decide whether the Defendant should waive the aforesaid rights and enter a plea of nolo contendere. With a full understanding of the aforesaid rights, the Defendant, through counsel, hereby knowingly and voluntarily waives: the service of process upon its registered agent or any officer thereof; the statutory period between service of the summons on the Defendant's registered agent and the date this cause is set for arraignment; the arraignment and reading of the information in this cause; the ten-

day period after arraignment before trial; the right of trial by jury; the right to confront and cross-examine witnesses against the Defendant; the right to compulsory process for obtaining witnesses in the Defendant's favor; the appointment of counsel; the ten-day waiting period for trial after appointment of counsel; and any further time to prepare for trial to which the Defendant or its counsel may be entitled.

In open court the Defendant, through counsel, freely and voluntarily enters a plea of nolo contendere to the offense charged in the indictment, and stipulates, without admitting the truth of the allegations, that if the State's witnesses were present in court to testify, the testimony would embrace each and every element of the offense charged in the indictment, which occurred on or about **JUNE 13, 2002**. The Defendant consents to the oral and written stipulation of evidence in this case and to the introduction of affidavits, written statements of witnesses, and other documentary evidence, and requests this Court to make immediate disposition of this cause, based on the Defendant's plea. Upon that plea, the Defendant understands that the prosecutor will recommend that punishment be assessed at **A FINE IN THE AMOUNT OF TEN-THOUSAND DOLLARS (\$10,000.00)** plus court costs. In addition, the Defendant agrees to pay restitution in the amount of \$2,784.00 to the City of Houston, Dept. 10, Fund 236, Revenue Code 8855, at the time of this plea. The Defendant agrees to that recommendation and understands that the recommendation is not binding on the Court. The Defendant further waives any right of appeal it may have should the Court accept the foregoing plea bargain agreement between the Defendant and the prosecuting attorney.

The Defendant, through counsel, has read the foregoing matters and understands each and every one of them.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**GARDNER ASPHALT, INC.**  
Appearing through counsel

\_\_\_\_\_  
M. BENJAMIN COWAN, Texas Bar No. 24001931

\_\_\_\_\_  
I, the undersigned Assistant District Attorney for Harris County, Texas, approve of and consent to the Defendant's waiver of trial by jury and stipulation of evidence, and I acknowledge my approval of this plea bargain agreement.

**FINDINGS OF THE COURT**

After the Court consulted with the Defendant's counsel and informed the Defendant, through counsel, of the nature of the charges, the Defendant's rights, and the consequences of a plea of nolo contendere, the Defendant waived arraignment and, with the advice of counsel, decided not to contest this cause. After execution, this document was filed with the papers of the case. The Court finds that the Defendant is represented by counsel authorized to dispose of this cause on the Defendant's behalf and that the Defendant's plea was entered only after the Defendant knowingly, intelligently, and voluntarily waived the right to a trial by jury, and all other rights set out above. The Court hereby approves of and consents to the waiver of trial by jury by both parties in this cause, and accepts this plea, which is the result of a plea bargain agreement between the Defendant and the prosecuting attorney. The Court further finds that Harris County bore the entire burden of prosecuting this case, and hereby apportions seventy-five percent (75%) of the fine, or \$7,500.00, to Harris County, and twenty-five percent (25%) of the fine, or \$2,500.00, to the State of Texas.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
JUDGE, 262<sup>ND</sup> CRIMINAL DISTRICT COURT



## Miscellaneous Provisions Cases

### Statutory Jeopardy

*Ex parte Canady, Pennell, Mendez, and Hawkins*, Nos. 14-03-005590CR, 14-03-00560-CR, 14-03-00561-CR, 14-03-00562-CR (Tex.App.—Houston [14<sup>th</sup> Dist.] July 1, 2004, no pet.)

This was a State appeal from the trial court's grant of habeas relief to these defendants. The indictments against the defendants were based upon conduct for which their employer, SeaTrax, Inc. and another corporation, Emmett Properties, Inc., were assessed administrative penalties and paid those penalties. The administrative penalties assessed and paid were for "the same acts and violations of law" that were alleged against each individual defendant. Section 7.068 of the Water Code prohibits the State from pursuing any additional civil or criminal prosecutions if an administrative penalty has been paid for the same violation. The trial court concluded that because SeaTrax and Emmitt Properties had already paid administrative penalties for violations that occurred on the same day, the State was prohibited from prosecuting these individual defendants.

The Court of Appeals held that payment of an administrative penalty by SeaTrax for its violation prohibits further prosecution only against SeaTrax and does not absolve the individuals from liability. Accordingly, the State is not barred from prosecuting the defendants individually for their actions because they are charged with separate violations under the Code for which no administrative penalty has been paid.

## **STATUTORY AND AFFIRMATIVE DEFENSES**

**TEXAS WATER CODE**  
**CHAPTER 7. ENFORCEMENT**

**SUBCHAPTER F. DEFENSES**

**§ 7.251. Act of God**

If a person can establish that an event that would otherwise be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

**§ 7.254. Defense to Used Oil Offenses**

It is an affirmative defense to prosecution under Section 7.176 that the person unknowingly disposed of used oil into the environment because the used oil had not been properly segregated or separated by the generator from other solid wastes.

**§ 7.255. Defense Excluded**

Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the commission does not relieve that person from liability for the violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute.

# **CRIMINAL ENFORCEMENT REVIEW**

**TEXAS WATER CODE**  
**CHAPTER 7. ENFORCEMENT**

SUBCHAPTER E. CRIMINAL OFFENSE AND PENALTIES

**§ 7.203. Criminal Enforcement Review**

(Note: Underlined portions represent House Amendments to SB 1265.)

(a) This section is applicable to criminal prosecution of alleged environmental violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. This section does not apply to an alleged environmental violation that clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation by a person holding a permit issued by the commission or an employee of that person of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction to a prosecuting attorney for criminal prosecution, the peace officer shall notify the commission in writing of the alleged criminal environmental violation and include with the notification a report describing the facts and circumstances of the alleged criminal environmental violation. This section does not prohibit a peace officer from issuing a citation or making an arrest.

(c) As soon as practicable and in no event later than the 45<sup>th</sup> day after receiving a notice and report under Subsection (b), the commission shall evaluate the report and determine whether an alleged environmental violation exists and whether administrative or civil remedies would adequately and appropriately address the alleged environmental violation. In making its evaluation and determination, the commission shall consider the factors prescribed in Section 7.053. If the commission does not make a determination within the 45-day period required by this subsection:

- (1) the appropriate prosecuting attorney may bring an action for criminal prosecution; and

- (2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

(d) If the commission determines that an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate to address the violation, the commission shall notify the peace officer in writing of the reasons why administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution, and the prosecuting attorney may proceed with the criminal prosecution of the alleged violation. In all other cases, the commission shall issue written notification to the peace officer that the alleged environmental violation is to be resolved through administrative or civil means by the appropriate authorities and the reasons why administrative or civil remedies are adequate or appropriate. A prosecuting attorney may not prosecute an alleged violation if the commission determines that administrative or civil remedies are adequate and appropriate.

Any fine, penalty, or settlement recovered through a prosecution subject to this section and brought in the name and by authority of the State of Texas, whether recovered through any form of pretrial resolution, plea agreement, or sentencing after trial, shall be apportioned 70 percent to the State to cover the costs of instituting the procedures and requirements of Subsections (a)-(d) and 30 percent to any local government significantly involved in prosecuting the case. In a case where the procedures described in this section do not apply, the provisions of Section 7.190 apply.

#### TRANSITION.

Not later than six months after the effective date of this Act (September 1, 2003), the Texas Commission on Environmental Quality by rule shall establish procedures to fulfill the requirements of Subsections (a) through (d), Section 7.203, Water Code, as added by this Act, and to ensure an objective and unbiased process.

**THE STATE OF TEXAS** § **IN THE \_\_\_\_\_ DISTRICT COURT**

**COUNTY OF HARRIS** § **OF HARRIS COUNTY, TEXAS**

The State of Texas: § **To:**  
By serving its registered agent:

**GREETINGS:**

You are hereby commanded to appear in the \_\_\_\_\_ District Court of Harris County, in the Courthouse in the City of Houston, Texas, at or before ten o'clock a.m. on the Monday following the expiration of 20 days after the date this summons is served upon you, then and there to answer the State of Texas on a charge of \_\_\_\_\_, charged in the accompanying certified copy of the information, which was filed in said Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, numbered \_\_\_\_\_ and styled The State of Texas vs. \_\_\_\_\_ on the docket of said Court.

**TO OFFICER SERVING:**

Herein fail not but of this writ make due return showing how and when you executed the same. Issued \_\_\_\_\_, 20\_\_\_\_.

WITNESS: CHARLES BACARISSE, Clerk of said Court, and seal thereof at office in the City of Houston, Texas this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_

Deputy

**THE STATE OF TEXAS**

**§ IN THE COUNTY CRIMINAL COURT AT**

**COUNTY OF HARRIS**

**§ LAW NO. \_\_\_ OF HARRIS COUNTY**

The State of Texas:

**§ To:**

By serving its registered agent:

**GREETINGS:**

You are hereby commanded to appear in the County Criminal Court at Law No. \_\_\_\_ of Harris County, in the Courthouse in the City of Houston, Texas, at or before ten o'clock a.m. on the Monday following the expiration of 20 days after the date this summons is served upon you, then and there to answer the State of Texas on a charge of \_\_\_\_\_, charged in the accompanying certified copy of the information, which was filed in said Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, numbered \_\_\_\_\_ and styled The State of Texas vs. \_\_\_\_\_ on the docket of said Court.

**TO OFFICER SERVING:**

Herein fail not but of this writ make due return showing how and when you executed the same. Issued \_\_\_\_\_, 20\_\_.

WITNESS: CHARLES BACARISSE, Clerk of said Court, and seal thereof at office in the City of Houston, Texas this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_

Deputy



**PEACE OFFICER'S RETURN**

Received this writ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock  
\_\_\_\_.m., and executed the same in Harris County, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m., by serving \_\_\_\_\_, in his  
capacity as agent of a corporation, by delivering to said agent, in person, a true copy of this writ, together with an  
accompanying certified copy of the complaint/indictment.

Serving \_\_\_\_\_ copy \_\_\_\_\_ \$\_\_\_\_\_ Sheriff of  
\_\_\_\_\_ Harris County, Texas  
Total . . . . . \$\_\_\_\_\_

By: \_\_\_\_\_  
Deputy Sheriff

No. \_\_\_\_\_  
**IN THE COUNTY CRIMINAL COURT**  
AT LAW NO. \_\_\_\_\_  
**OF HARRIS COUNTY, TEXAS**

**SUMMONS**

**THE STATE OF TEXAS**

**v.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issued** \_\_\_\_\_, 20\_\_

**CHARLES BACARISSE**

**District Clerk of**

**Harris County, Texas**

**By:** \_\_\_\_\_  
**Deputy Clerk**

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

**IN THE \_\_\_\_\_ DISTRICT COURT  
OF HARRIS COUNTY, TEXAS**

**SUMMONS**

**THE STATE OF TEXAS**

**v.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issued \_\_\_\_\_, 20\_\_**

**CHARLES BACARISSE**

**District Clerk of**

**Harris County, Texas**

**By: \_\_\_\_\_  
Deputy Clerk**