

Texas Illegal Dumping Resource Center
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Overview of THSC Chapter 341

Contact: John Ockels, ockels@mac.com

Texas Health & Safety Code (THSC) Chapter 341 is the state criminal law designed to address Public Health Nuisances, including those caused by illegal dumping. If the dumping creates a place where mosquitoes can breed or rats can live, it's probably a Public Health Nuisance. This law is in force now in every city and county in Texas and does not have to be adopted by a local government before using it.

The formal name of Chapter 341 is MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES, which is a mouthful, but you'll seldom hear it called that. "Chapter 341" will do. It's a long law, but we'll only use a few parts referring to Public Health Nuisances. These are defined in several sections at the front of the law and punished by a section at the very back. So, think of this chapter as a sandwich. We care about the bread on both ends, but not much about the filling. Those middle sections pertain to other things unrelated to illegal dumping.



There are many situations that this law defines as being a Public Health Nuisance. An easy way to think about it is that if you have **created** anywhere [or are **maintaining** on property you possess (own, lease, or otherwise control)] a place that is a home for mosquitoes or rats, then you're probably in the Public Health Nuisance business. Just think: if dumping creates a place for mosquitoes or rats, then IN ADDITION to the crimes involved in the illegal dumping itself you have ALSO committed the crime of creating a Public Health Nuisance. This is an additional violation so additional daily penalties should be applied.

The crimes committed by violating Chapter 365 by the dumping itself may have happened so long ago that they can no longer be prosecuted. Dumpers are protected by the Statute of Limitations set in Chapter 12 of the Code of Criminal Procedures (you have three years after the dumping happened to indict a person for felony dumping; two years for misdemeanor dumping). The Public Health Nuisance created by dumping NEVER STOPS being a new daily crime each day the waste is there inviting mosquitoes and rats to move in until it is abated ...

sometimes lasting for years.

Think of a pile of scrap tires dumped ten years ago. Today, yesterday, and right on back to the day they were dumped they were a Public Health Nuisance. The properly applied penalty for this, according to the State Legislature, is \$10 to \$200 for each day the welcome mat was out for the mosquitoes and/or rats.

Immediate Policy Problem

Here's an immediate policy problem to be resolved. Creating (at any location in Texas) or maintaining a Public Health Nuisance on property you possess is a criminal violation each day it is there. The statute language in THSC Sec. 341.091(c) is *"Each day of a continuing violation is a separate offense."* This not a suggestion from the State Legislature. It is a direction as to how multiple days of a violation are to be prosecuted and judged. The penalty for each day of violation ranges from \$10 to \$200 and the court has total discretion as to setting the "per day" fine.

There is no statutory discretion as to the way that a series of daily violations is to be handled. Public Health Nuisances are dangerous to public health. Period. If a violator decides to create or maintain one, the health of the community is threatened each day. Hence the penalty is applied each day PROVIDED that the judge doesn't think he or she knows better than the State Legislature and decides to ignore the sentencing structure.

This presents a major decision point for jurisdictions that would use this law to respond to Public Health Nuisances. If a court is not going to apply the "daily violation" sentencing set by the State Legislature, perhaps it should simply not try to enforce this law at all, because in virtually all locations in Texas the "per day" fine is the only thing giving this law any power to force abatements. Here's why.

The power of a court specifically to order abatement does not appear in their range of available punishments shown in Section 341.091. Moreover, the local health authorities who are directed in Section 341.012 to work with violators to force abatement ALMOST ALWAYS fail to follow this process (see more on this below). **Consequently, unless courts put financial pressure on violators to abate Public Health Nuisances, nothing happens.**

A quick look around Texas communities will confirm this. Longstanding Public Health Nuisances are seldom subject to the forced abatement process described in Section 341.012. Instead, we just live with them, especially in poorer communities. So, there are TWO ways to force the abatement of Public Health Nuisances by the violator ... (1) Section 341.012 actions by the local health authority and (2) fines imposed by the court ... but BOTH are regularly ignored by local authorities. This is something to get resolved locally before investing too much energy in enforcing Chapter 341.

Examining Chapter 341

Now let's look at some of the important provisions of Chapter 341, starting with a couple of the definitions in Section 341.001. Also, note that Texas Health and Safety Code Chapter 361

... the Solid Waste Disposal Act ... has additional definitions if you think a word might have a technical, restricted meaning. Check there before turning to the dictionary.

Since these twelve situations are prohibited as criminal violations; any certified law enforcement officer can enforce them in his or her jurisdiction. However, note that while some of the twelve violations can be immediately determined by a law enforcement officer, others may require some technical assistance from the Local Health Authority. If a formal Public Health Department has been formed in the county, it's employees may be enforcing this law and/or THSC Chapter 343 in the unincorporated areas.

Many of the definitions given in 341.001 pertain to parts of this law other than Public Health Nuisances. They're about the filling of the sandwich. But note numbers (5) and (7). These are both important.

Number (5) reminds us that the word PERSON means far more than just an INDIVIDUAL. Just about any legal entity is going to be covered by this law, including cities and counties. If your city, county, or special district has created or is maintaining a Public Health Nuisance, it is as liable as an individual at his residence or a business. And, of course, if your city itself is creating or maintaining Public Health Nuisance it's going to be pretty hard to enforce this law against residents.

Number (7) is the definition of the word "sanitation" used in this chapter. It is defined as *"a condition of good order and cleanliness that precludes the probability of disease transmission."* That definition will be used frequently in applying Chapter 341. The rest of these definitions generally apply to other sections of Chapter 341.

Specific Public Health Nuisances

The next section of interest is 341.011, where twelve Public Health Nuisances are defined. Code officers will note right away that several of these twelve deal with the same issues as their municipal codes. But these twelve violations are state CRIMINAL law that can be enforced mostly by peace officers. However, some require professional knowledge on health issues. Consequently, some of these provisions are more commonly used by local law enforcement to focus on the health impact of the waste dumped than others.

Here are the twelve Public Health Nuisances as the statute is written:

THSC Sec. 341.011. NUISANCE.

Each of the following is a Public Health Nuisance:

- (1) a condition or place that is a breeding place for flies and that is in a populous area;*
- (2) spoiled or diseased meats intended for human consumption;*
- (3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;*

- (4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;*
- (5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;*
- (6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;*
- (7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;*
- (8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;*
- (9) a place or condition harboring rats in a populous area;*
- (10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;*
- (11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and,*
- (12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.*

Some of these seem to cover things that were common some years ago but not often seen now. Number (8) for example cites a badly operated *“bone boiling or fat rendering plant, tallow or soap works, or other similar establishment.”* You don’t see a lot of these anymore, but apparently in the history of Texas these places were sources of Public Health Nuisances if operated incorrectly, so they made this list of twelve.

I’d like to think that number (10) was in the same class of “older” violations we don’t see any more. It names *“ectoparasites, including bedbugs, lice, and mites”* ... in motels and hotels. Unfortunately, those are still with us, so number (10) is contemporary.

Number (3) is the basic law that health departments enforce when doing restaurant inspections. Municipal code officers may enforce an ordinance their city has adopted that is similar, but that is not the same as enforcing this provision. Section 341 is a criminal law and code officers don’t enforce criminal law, unless they happen also to be peace officers. Be sure to keep the distinction clear in your mind. This is the state criminal law against operating food establishments in an unsanitary way.

The word “populus” appears in two of these twelve defined Public Health Nuisance ... numbers (1) and (9). That’s a term that is undefined in the THSC ... at least I haven’t been able

to find it.

My wife and I have gone around and around about number (9), which defines “a place or condition harboring rats in a **populous** area” as a Public Health Nuisance. We have a large farmer’s field behind the house. A couple of winters ago some field rats moved up closer to the house to get the bird food we scattered around out of the deep snow. Smart rats. These were clean, sleek Texas field rats, not the ones in pictures of New York City. I thought they were pretty cool, but I was a chorus of one. Since our place is not jammed up against neighbors, I was arguing that the rats were fine because we didn’t live in a city ... you know, a “populous” area with lots of people. However, my wife pointed out that the word “populous” is a Latin noun in its singular form: it means ONE person. Since that was her, the rats had to go. I’m not sure why I resisted at all, but I thought they were pretty healthy animals, God’s way of controlling cockroaches and other bugs. “Populus” means one person. No messes luring rats [or flies per Number (1)] are allowed around people.

Number (5) covers most sewage violations although there is a separate Section .014 in this law that specifically covers DISPOSAL OF HUMAN EXCRETA. Between that section, number (5) and number (11) most common sewage issues can be handled. Remember that THSC Chapter 365 does NOT include human sewage in the definitions of LITTER or SOLID WASTE so that law cannot be used. If you are faced with a sewage problem, treating it as a Public Health Nuisance and using Chapter 341 is the best bet. Also, if there is a possibility that water is being polluted ... or being put in danger of being polluted ... using TWC Sections 7.145 and 7.147 might be considered. Remember that the state legislature has set enormous penalties for polluting water in Texas, it being our most limiting natural resource.

Number (6) is a leaking trash truck that is “defective and allows leakage or spilling of contents.” If you see leaking or spillage from a trash truck, be sure to ticket those violations. Inside cities, private vendors often have a contract to collect trash that is subject to annual negotiation and renewal. If a vendor is operating in such a way that its vehicles are Public Health Nuisance, making sure your city has proof of this in the form of tickets may help lower rates when time for renegotiation comes.

Also, notice number (12), which is the catch-all. You could cite this violation to deal with the effects of dumped materials, but there’s an even better way described below at Sec. 341.013(c).

What To Do if You Have a Public Health Nuisance

When law or public health enforcement finds one of these situations, there are two things to be done:

(1) the violator needs to be cited to get him in front of a judge for punishment for being responsible for the Public Health Nuisance for as many days as it’s been in existence; and

(2) the Public Health Nuisance needs to be abated. The citation will typically be heard in a Municipal or Justice Court where a fine is set. If the violator does not abate the

nuisance within the time given by the local health authority, a local prosecutor is directed by the State Legislature to get him into a higher court. There any claims of indignancy can be heard the violator ordered by the court to do the abatement. This process of abatement set by the State Legislature is rarely followed anywhere I have been able to find in twenty-five years.

Here's what the abatement statute says:

Sec. 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.*

Reading paragraph (a), if a person **possesses** a property having a Public Health Nuisance, he or she is supposed to abate that nuisance as soon as he or she becomes aware of its existence. This is the basic policy of the State of Texas. This is expressed in (a) of this section above. Note that the responsible person is the one who "possesses" a location with a Public Health Nuisance. This could include the owner, tenant, adverse possessor (why not?), trust, or another entity or person controlling the property. "*Knowing that the nuisance exists*" in (a) does not have to be the result of the city or county providing formal notice. For a lot of guys, their wife will give them "familial notice," and that should take care of it. The legislature takes the position that the *possessor* of property should take the lead in keeping that property clean. That's one of the responsibilities of property ownership in Texas.

Paragraphs (b) through (d) describe the steps for a Local Health Authority to force the property possessor to deal with the Public Health Nuisance in those cases where the possessor has not already acted. This is the process that is SUPPOSED to kick-in if you ignore your wife.

However, note that (b) through (d) are only *partially* done by most local health departments. This is where the system breaks down. These provisions are rarely followed.

The Five “Shalls” of Nuisance Abatement

Notice the mandatory language used by the State Legislature in establishing these procedures in Sec. 341.012 (b) – (d).

- (1) A person possessing a place with a health nuisance **shall abate** the nuisance as soon as he or she discovers it exists – not only when eventually ordered to do so by the government;
- (2) But when the Local Health Authority becomes aware of the presence of a nuisance, the health authority **shall notify** any person responsible for the Public Health Nuisance in writing of the existence of the health nuisance on the property and set a period to abate the nuisance;
- (3) The Local Health Authority **shall at the same time send a copy** of the notice to the jurisdiction’s prosecuting attorney;
- (4) If the health nuisance is not abated within the period specified, the Local Health Authority **shall notify the prosecuting attorney** who had received notice; and,
- (5) The prosecuting attorney **shall take the offender to court and seek a court order** forcing abatement.

Section 341.012 (b) – (d) is a sound abatement procedure, but I’ve never been able to find a Local Health Authority in Texas that follows it as written. I’ve found a few who *claim* to follow these provisions, but so far, their assertions don’t hold up under close questioning.

What normally happens (when any form of enforcement actually takes place) is that a health authority officer will respond to the presence of a Public Health Nuisance by notifying the property possessor of the violation and setting a time for the nuisance to be abated. The officer will do this by issuing a Notice to Abate or seminal document. The focus is almost always on the abatement in this first contact.

Note that in Sec. 341.012(a) the **possessor** of the property is responsible for the abatement without the intervention of the Local Health Authority. BUT, when the representative of the Local Health Authority comes to deliver the Notice to Abate in Section 341.012(b), the subject of that notice has now become **any person responsible for the nuisance**, not simply the possessor. That could be a neighbor, a company who is using a piece of property as a dumping area, or someone other than the property possessor.

Contrasting this with municipal code enforcement ... Sometimes municipal code officers are limited by unfortunate language of their codes to working only with the “owner” of a problem property, who cannot always be easily found. But if law enforcement or health enforcement uses CHAPTER 341 that problem is eliminated. This law allows focuses on the “possessor” or even “the person responsible” under CHAPTER 341. Since code enforcement officers cannot directly use CHAPTER 341, this wider definition of the responsible party is one more reason to get local

police involved. Additionally, if a code violator has been directed by code officers to remove a pile of “refuse on a lot” (for instance, a pile of scrap tires), if the code violator moves the tires across the street to someone else’s property, code officers often then pursue the owner of the new property for now having “refuse on a lot.” Law and health enforcement officers using Chapter 341, however, can continue to act against the original violator ... who has now become “the personal responsible” for the Public Health Nuisance.

But Things Usually Go Haywire

But things usually immediately go off the track in following the mandatory abatement statutes because the prosecutor is left out of the process by the representative of the local health authority.

Usually, no notice will be given by the Local Health Authority to the prosecutor at all, even though that is a mandatory step in the process at Sec. 341.012(b). By failing to notify the prosecutor – even though the statute seems to give a Local Health Authority a lot of room to work out how this notice will flow to local prosecutors – the health authority begins to follow its own ideas and to ignore state law.

But no harm is done, one might argue, if the person with responsibility for the health nuisance ... the violator ... simply abates the problem property as directed to do by the notice.

In theory, that would be true. Not all property possessors are immediately compliant. Many simply won’t respond to the Notice to Abate the Public Health Nuisance.

Here’s the rub: If the time set by the health officer passes and the nuisance hasn’t been abated, the health officer in practice usually does not notify the prosecuting attorney as the statute requires (after all, the health officer never provided the prosecutor with a copy of the original notice, and no prosecutor support process has been established). **At this point, the process defined in the statute by the State Legislature to abate the mess is simply abandoned.**

Instead, if the period in the notice has passed and the abatement hasn’t taken place, the representative of the Local Health Authority will often take off her “abatement” hat and put on her “law enforcement” hat. She’ll then give a citation to the property possessor and direct the violator to appear in JP or municipal court. The citation given is *not* for failure to follow the Notice to Abate, but for having the CHAPTER 341 violation in the first place.

This really gums things up.

When the hearing on the citation happens, the JP or Municipal Judge will probably find the property possessor guilty of having the Public Health Nuisance and fine the violator. But the judge will *not* generally order any abatement (since the criminal enforcement powers of the judge set forth in Sec. 341.091 don’t include being able to order a clean-up for these violations).

When the Representative of the Local Health Authority modifies the abatement process by (1) issuing an Notice to Abate, (2) failing to include giving notice to the prosecutor, (3) seeing nothing happen, (4) abandoning all efforts to force an abatement, and then (5) issuing a citation,

the health authority has decided impose their own process instead of following the one mandated by the State Legislature. The “five shalls” of abatement are ignored after the initial Notice to Abate is issued.

Of course, as expected, if you only do 20% of a process, you generally won’t get the desired result.

Unless the violator cleans the property voluntarily, the ways that an abatement can be imposed under CHAPTER 341 are (1) for the Representative of the Local Health Authority and local prosecutor to actually follow the mandated (everybody follows all the “shall” words) procedure in Sec. 341.012; or (2) actually follow the sentencing provisions at Sec. 341.091, treat every day of an ongoing violation as a separate offense, and simply make it too expensive for a violator not to abate the mess.

I guess there is a third non-statutory way some courts proceed: for the JP or Municipal Judge to over-step his or her bounds (either intentionally or in error) and order an abatement of the Public Health Nuisance. That power does not exist under Section 341.091. SO if you have a Justice or Municipal Court ordering abatements under Chapter 341, I’d encourage you to ask what statutory authority they are following in adding this power in Chapter 341 cases. Ordering abatement upon conviction in Chapter 343 cases in the unincorporated area is required [see Section 343.012(e)], but not in Chapter 341 cases.

However, building an effective enforcement program by hoping for regular judicial error is generally a bad idea, so we’re left with the Local Health Authority doing its job or applying fines as the State Legislature directs as the only practical alternatives. That is, if we want Public Health Nuisances abated.

I’m not sure why every Local Health Authority I’ve spoken with in Texas — and, of course, I haven’t spoken to them all — ignores the process the State Legislature has established for forcing an abatement. However, I suspect that part of the reason is fear of having to inform the local prosecuting attorney that he or she also faces mandatory action. I’ve had more than one health department director assure me that the local prosecutor doesn’t want to be notified of Public Health Nuisance and “doesn’t care.” It’s much more likely that the prosecutor is simply unaware of the law. Maybe the prosecutor should be allowed to demonstrate that he or she cares or not rather than having that opinion forced on him or her.

Or maybe reduced abatement efforts is a staffing issue. But few counties have taken advantage of the provision that lets them appoint a staff member to represent their Local Health Authority [under THSC Sec. 121.003(c)] where they haven’t created a health department.

But the State Legislature has this exactly right: when the property possessor won’t keep his or her property clean AND when he or she also ignores orders to clean the property issued by the Local Health Authority, it’s time for local government to act swiftly to force abatement through the prosecutors and the courts. This includes redefining the “person responsible” to be someone other than the property possessor if that’s what is going on in the situation. And setting the fines as the statute directs.

This is another variation of “Who is going to pay for the clean-up? The TAXPAYER or the VIOLATOR?” Except here there is an added twist. With regards to Public Health Nuisance many jurisdictions let the VIOLATOR ... the guy responsible for the Public Health Nuisance ... totally off the hook by first CLAIMING to be using taxpayer funds to force a violator to abate the mess but then NOT ACTUALLY DOING anything to force the cleanup. The situation in many Texas jurisdictions now with reference to Public Health Nuisance is that the taxpayers apparently have made a bad decision in funding their local government to force violators to clean up their Public Health Nuisances. Worth pondering.

The health needs of the wider community require governmental action when citizens are unresponsive. Fair enough. But what are the citizens supposed to do when the local government doesn't follow state laws in looking it for the citizens' health?

Section 341.013 Garbage, Refuse, and Other Waste

Of course, with or without a health department or a functioning Local Health Authority handling abatement, local law enforcement can and should enforce CHAPTER 341 to get uncooperative residents in front of a JP or Municipal Judge to answer for criminal violations. In fact, in many parts of Texas if law enforcement fails to enforce this law, the harmful effects of unabated Public Health Nuisance will continue to be present for decades.

After all, not all “criminals” are big dudes stealing things and beating on women; some “criminals” are very, very small. Mosquitoes carrying bacteria or viruses will put more people in the hospital than one big villain on drugs possibly ever could. You might also reflect on the fact that mosquitoes have the effect of making us all “blood brothers,” sharing minute amounts of each other's blood and disease, up and down the street. The “Protect and Serve” motto of local police includes protecting the citizens from the effects of these “littlest criminals” too.

However, the point of this law is very simple: situations threatening public health can't be tolerated. Thankfully, there is one section of CHAPTER 341 that can be used to deal with just about *any* Public Health Nuisance. Officers can easily learn and apply this one section, designed to eliminate the hideouts of those “littlest criminals.”

Granted, determining if a situation constitutes a Public Health Nuisance can be complex, and officers may have to solicit the help of local and state health departments in deciding in some cases.

This Section 341.013(c) covers most *actual or possible* Public Health Nuisance that might impact a community. Notice that this definition can be applied to illegally dumped materials of just about any kind; such dumping almost always actually or potentially pollutes air, land, or water resources or provides breeding places for insects or rodents. We strongly encourage local community leaders to insist on law enforcement enforcing this particular provision along with the illegal dumping laws.

Here's the language of that section:

THSC Sec. 341.013

(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.

There's really no reason NOT to enforce this law in your city or county. It is already on the books in Texas (it does not have to be "adopted" by a local government before use); it increases officer involvement in the health of the community by ending the idea that "there is nothing we can do" in many cases; and it will quickly become easy to use. If any pile of waste the officer sees is a "breeding place" for mosquitoes or rats, for instance, Section 341.013(c) is easily applied.

More on THSC Sec. 341.013

There are three other subsections in Sec. 341.013 of interest and use in local enforcement. The first, subsection (a), contains a general prohibition against unsanitary conditions being allowed to exist in virtually any location:

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

Since this statute contains a specific definition of "sanitary" at Sec. 341.001(7) – "*Sanitary*" means a condition of good order and cleanliness that precludes the probability of disease transmission – paragraph (a) could be used in the most general circumstances to issue a citation or trigger the abatement process in Sec. 341.012. We say, "could be used," simply because we've yet to encounter an officer basing a Public Health Nuisance on such a generality.

A second paragraph in Sec. 341.013 that may be used in situations where the waste is in liquid form that is being allowed to discharge into a public area:

(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.

This would define situations such as we observed a few years ago in a county north of Dallas. The operator of a restaurant was having trouble with the sewer discharge system, so he simply ran a hose out the back door of the kitchen and discharged dirty dishwater directly into the borrow ditch that ran by highway US 75.

Because of the public nature of the offense, many calls went to the local police. The violator could have been charged with (1) illegal dumping under THSC Chapter 365, or (2) misdemeanor or felony water pollution under TWC Sections 7.147 or 7.145, respectively, or (3) with some other Public Health Nuisance discussed above. As I recall he wasn't charged with anything. The police didn't see this as being a problem. He violator stopped when his wastewater discharge issue was solved in a week or so.

This sort of thing raises the question, **“Are police authorized to simply ignore felonies if they disagree with the State Legislature?”** As we argue elsewhere, with Texas anticipated to grow about 75% by 2060 (Grayson County, from where this example comes, is projected to grow by 46%), protecting water from pollution will become an important primary responsibility of local governments.

Despite many complaints from passing citizens, that city government did nothing. Ignorance abounds. So does wanting to avoid “confrontation” with violators. Where kitchen, laundry, or sewer waste is being allowed to flow into public places, THSC Sec. 341.013(b) would be a good paragraph to consider using. Or in this case just have the police charge the water pollution felony or the very expensive misdemeanor. By the way, that restaurant closed during COVID. All that’s left is the memory of a few local citizens that it is fruitless to expect their city to protect the quality of water by enforcing state criminal laws. Sad legacy.

The third useful paragraph in Section 341.013 sets state policy on responsibility for Public Health Nuisance at vacant or abandoned property:

(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.

When code violations appear at vacant or abandoned properties, officers often have a difficult time locating a responsible party. Where there is still a mortgage involved, officers often spend enormous amounts of time attempting to locate the department in the *lender* who currently holds the note. Because of the frequency with which mortgage loans are sold and re-sold within the financial services industry, searching for the current *lender* is seldom fruitful. Residential loans are bought and sold by banks in blocks; often a bank simply doesn’t know if it owns a particular loan without a lot of digging through boxes. A better approach is to locate the *loan servicer*, which is the entity that the original *lender* selected to handle month-to-month cash flows on the property. Although the ownership of the loan and mortgage may be widely traded, the loan servicer is usually the company originally selected.

Under loan servicing agreements with the lenders, the servicing company handles such things as processing normal monthly cash flows and foreclosures. In fact, in some cases a loan servicer can earn more in foreclosure fees than from routine month-to-month payment collection. The loan servicer is among those parties who “control” properties, as the term is used in this paragraph. Consequently, if local officers can locate the loan servicer for a particular vacant or abandoned property, that party will often be key to getting code and Public Health Nuisance abated. One good way to locate loan servicers is through the “Property Preservation Service Contacts” page at the Mortgage Bankers Association website. Motions filed in local court concerning the bankruptcy – especially motions concerning the appointment of a Substitute Trustee – often shows the loan servicer for the property in question.

Other Public Health Nuisances

There are a couple of other recurring Public Health Nuisance situations, the first of which may involve illegal dumping. In *Chapter 4: Primary Illegal Dumping Enforcement* we read that the most frequently used illegal dumping law – THSC Chapter 365 – *cannot* be used to deal with human waste. It is specifically excluded from both the definitions of *litter* and *solid waste* that Chapter 365 is designed to control. So, using this section from THSC Sec. 341.014 may work perfectly:

Section 341.014 Disposal of Human Excreta

(a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other Public Health Nuisance.

Although this provision exists and may be used when the situations it describes are present, it is more common to see Public Health Nuisance charges for sewage use Sec. 341.011(5); Sec. 341.011(11); Sec. 341.011(12); or Sec. 341.013(c).

Another very important section of CHAPTER 341 is one passed by the 83rd State Legislature to help communities deal with swimming pools, scrap tires, and other breeding areas of mosquitoes on property reasonably presumed to be abandoned or on property vacant because of foreclosure.

The law does not specify at what stage in the foreclosure that entry rights come into being. Under the most liberal, yet reasonable, interpretation one would think that if an owner vacates his property after receiving any threat of foreclosure from the loan servicer, this law then come into effect. Note that the 84th State Legislature made changes to Sec. 341.011(7) that made this section more applicable in rural areas. Entry is not restricted to local health department officers.

Section 341.019 Mosquito Control on Uninhabited Residential Property

(a) Notwithstanding any other law, a municipality, county, or other Local Health Authority may abate, without notice, a Public Health Nuisance under Section 341.011(7) that:

(1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and

(2) is an immediate danger to the health, life, or safety of any person.

(b) A public official, agent, or employee charged with the enforcement of health, environmental, or safety laws may enter the premises described by Subsection (a) at a reasonable time to inspect, investigate, or abate the nuisance.

(c) In this section, abatement is limited to the treatment with a mosquito larvicide of stagnant water in which mosquitoes are breeding.

(d) The public official, agent, or employee shall post on the front door of the residence a notice stating:

- (1) the identity of the treating authority;*
- (2) the purpose and date of the treatment;*
- (3) a description of the areas of the property treated with larvicide;*
- (4) the type of larvicide used; and*
- (5) any known risks of the larvicide to humans or animals.*

No Warning Period Required to Issue Citations for Violations

Many criminal enforcement officers use THSC Sec. 341.013(c) to issue citations and notices to appear in JP court — or a municipal court inside a city limit — to discuss the violation with a judge.

Notice that no “warning” or “period to abate before citation” is required before issuing a citation under this section. ONLY the previously discussed section — THSC Sec. 341.012 — allows a Representative of the Local Health Authority to evaluate the health nuisance and give the violator some time to abate the nuisance if that makes sense.

Deputies and police simply are not given the power under this law to authorize the violator time to clean up the mess (although this often happens and warning tickets are issued), nor can deputies and police “encourage” the violator to abate the nuisance (although this often happens too). What the police, sheriff deputies, fire marshals, constables and other law enforcement officers CAN do, other than issue a warning citation, is cite the possessor for having the violation described in Sec. 341.013(c), send him to JP or Municipal Court for the hearing on the violation.

Since the judge in a CHAPTER 341 citation case is not empowered under this law to order abatement either, what the judge can do is fine the violator and say, “*I’ll see you tomorrow.*” Each day of an ongoing violation is a separate offense (and the police or deputy would just keep on citing the person until he finally cleaned the mess).

On every THSC Sec. 341 Public Health Nuisance case where the Local Health Authority has not acted to force abatement, the judge should be asking the Local Health Authority why they are not following the mandatory abatement process the State Legislature provided in THSC Sec. 341.012. Where the Local Health Authority exercises its powers under THSC Sec. 341.012, there will eventually be fewer court cases.

So, you can see that where the Local Health Authority fails to act to force an abatement using the process given by the State Legislature at THSC Sec. 341.012, about all the police and judges can legally do is keep running a violator through the process until the guy gets tired and cleans-up the nuisance. Or until a judge imposes a punishment not allowed under the statute — or until a peace officer goes beyond his or her authority and threatens the person with a larger

charge — or until local policy changes and the health authority and prosecutors begin to follow state law — or until the court itself gets serious about observing the “*each day ... is a separate offense*” provision of the penalty (see immediately below) and prices the violator out of the nuisance-generating business.

Criminal Penalty for Violations

The punishments for these violations are at Texas Health & Safety Code Sec. 341.091 Criminal Penalties.

Sec. 341.091. CRIMINAL PENALTY.

(a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by 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.

The penalty sets a fine of from \$10 to \$200 *per day* for the first offense, and a greater penalty for a subsequent conviction — if the second conviction happens within one year following the first. The enhanced penalty is a fine of \$10 to \$1,000 and/or up to 30 days in jail. The first conviction can be in JP or municipal court, but a subsequent conviction — if handled as a subsequent prosecution — must move up to the county court (since there is the possibility of jail time involved).

Officers often ask the practical question of, “Do I have to issue a separate ticket for each day a person is in violation?” The answer is to discuss the matter with the JP who will be making decisions on the case. Often JP’s will agree to an alternative method of proving to the court that a situation existed for several days.

As with all Texas anti-pollution laws, the more times you read and ponder Chapter 341, the more uses it will reveal. There’s actually a good parallel to fishing in all this.

The more you read the fuller your tackle box will become. And like with any decent tackle box, there will be stuff in there that you have mostly forgotten. But then one of these days you’ll see some sort of mess that stops you cold. You’ll stare at it and wonder, “Now, what in the world can I do about that?” And maybe you’ll even ponder it a day or two.

Then in the middle of the night you'll sit up in bed and think, "Wait a minute. That situation is a Public Health Nuisance. Our new JP hates that kind of thing and he'll fine that guy for having that mess day-after-day. THAT's how we'll get that mess cleaned up." And then you'll roll over and go back to sleep, problem solved.

Your wanting that mess to be cleaned up has acted exactly like a lure to the things you've read but only half-remembered or even forgotten. Left to its own working that lure will root around in the tackle box of your mind until it finds a solution to your problem.

But if your tackle box is empty ... or too neat ... the lure will go unanswered. So, keep reading and talking to other officers who are doing their reading too. Environmental enforcement is very much a team sport.