2. Illegal Dumping Onto Land or Into Water

Texas Health & Safety Code Chap 365
Litter Abatement Act

Key Definitions

From Section 365.011

"Approved solid waste site" means:
(A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;
(B) a solid waste site licensed by a county under Chapter 361; or
(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

"Commercial purpose" means the purpose of economic gain.

"Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

"Dispose" and **"dump"** mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

"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.

"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 under Section 91.101, Natural Resources Code; and
(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

"Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

Violations

From Section 365.012

*(a) A person commits an offense if the person **disposes** or **allows or permits the disposal** of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.*

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

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

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

Penalties

From Section 365.012 (d) - (g)

Non-Commercial Dumping

(a) 5 pounds or less; 5 gallons or less	Class C Misdemeanor
(b) 5 pounds but under 500 pounds; 5 gallons but under 100 c.f.	Class B Misdemeanor
(c) 500 pounds but under 1,000 pounds; 100 cubic feet but under 200 c.f.	Class A Misdemeanor
(d) Over 1,000 pounds; Over 200 cubic feet	State Jail Felony

Commercial Dumping (See definition of "Commercial Purpose")

(a) 5 pounds or less; 5 gallons or less	Class C Misdemeanor
(b) 5 pounds but under 200 pounds; 5 gallons but under 200 c.f.	Class A Misdemeanor
(c) Over 200 pounds; Over 200 cubic feet	State Jail Felony

Dumped for Any Reason (Commercial or Non-Commercial)

(a) Any amount of waste in a closed drum or barrel	State Jail Felony

Beware "Class C Trap"

Filing everything as a Class C with the JP? Work with local prosecutors to create ways to file Class A and B Misdemeanors and felonies appropriately.

Limits to Dumping on Your Own Land

From Section 365.012

(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.

Break for Farmers

From Section 365.014

(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.

Break for Builders

From Section 365.012

(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**.

Break for Absentee Landowners

From Section 365.014

(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.

Temporary Storage Exemption

From Section 365.012

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