

Dumping On Your Own Property

April 1, 2018

True or false, the Texas illegal dumping laws apply to private property as well as public property?

Strangely, this is a question that often comes up in various environmental enforcement classes. The correct answer to the above question is “true.” This isn’t so strange when you stop to consider that the laws used to protect our resources and citizens by controlling pollution are just more state criminal laws, and these almost always apply everywhere. The notion that “a man can do anything with his own land he wants to” is flawed. For instance, he cannot commit a crime on his own land, and the state environmental laws are generally criminal.

The most popularly used (by local police and deputies) illegal dumping law is Texas Health and Safety Code Chapter 365. The law is called “Litter Abatement,” and it sets a penalty — from misdemeanor to state jail felony level — for various violations related to dumping “solid waste” and/or “litter.” The penalties are based on the weight OR volume of waste involved, at the officer’s discretion. All of the provisions of this law apply to private property as well as public, and many cases are filed each year against violators dumping on private property. For example, a tree trimming company that hauls the day’s waste out to a private location and dumps, with or without the owner’s permission, violates several criminal provisions of this law. Like all waste, that sort of material has to be disposed of by land filling, composting, or other means authorized by the State Legislature through TCEQ. And if a physician decided to have his office remodeled and the debris dumped on his ranch (along with old patient records, in this actual case), this law would properly identify such activity as illegal dumping. This is one the Texas Medical Board might have some interest in too.

THSC Section 365.012(1) allows some limited disposal of waste on one’s own property PROVIDED the provisions of that section are followed:

Sec 365.012(1) 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.*

First, note that this exemption ONLY applies to an individual; companies, associations, governments, and other legal entities are not included and, therefore, can't legally dump on their own property or that owned by others without state approval. Requirements (2) and (4) combine to eliminate dumping of commercially-generated waste and situations where the dumping is for economic gain. So if the violator is dumping waste generated from a business, making money from the disposal, or saving money by avoiding landfill fees, these two sections exclude him from being able to dispose on his own property. Likewise, requirements (1) and (3) require any such disposal to only cover waste being generated on property a person OWNS (as opposed to leases or rents) and the disposal can only take place on property OWNED by the individual.

The law doesn't include a definition of what the limiting term "waste generated on land" in (1) actually means. In some counties, the district attorney has decided that this exemption ONLY includes waste that has GROWN on the property, and limits this exemption to plant growth waste. In other counties, the DA has decided that the term "commercial purpose" in (4) is the important one, and won't apply this exemption to any waste that has been dumped to save disposal fees, even if the dumping is on one's own property. Before a person can dump on his own property, all four of these requirements must be met — along with the original one, that this exemption only applies to individuals.

Officers should bring Section 365.012(1) to their prosecutor's attention and get clear what this exemption applies to in the eyes of their own DA, given the absence of a definition for "waste generated on land" and the fact that many cases will involve the violator dumping on his own land.

However, none of the criminal anti-polluting statutes found in Texas Water Code Chapter 7 (Subchapter E) have a similar exemption: all apply to both public and private property. Likewise, THSC Chapters 341 and 343, used together to deal with public health nuisances everywhere (THSC Chapter 341) and rural public nuisances in Texas (THSC Chapter 343), apply to both public and private property.

All of this makes sense, given the facts that property regularly changes ownership in Texas and nobody wants to buy a dump.