

## Illegal Dumping & Prosecution of Environmental Crimes

Texas Environmental Health Association Conference

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## Overview

- What is Illegal Dumping?
- Criminal Offenses, Penalties and Defenses
- Case Study – *Gandy v. State*
- New Legislation
- Nuisance Abatement
- Used Oil Act Violations
- Water Pollution

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## Chapter 365. Litter Texas Litter Abatement Act

Subchapter B. Certain Actions Prohibited

Section 365.012. Illegal Dumping;  
Criminal Penalties

(Emphasis on Environmental Protection)

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## (a) Elements

- a person
- *intentionally or knowingly or recklessly* \*
- 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.

\* (Only applies to felony offenses)

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## (b) Elements

- a person
- *intentionally or knowingly or recklessly* \*
- 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).

\* (Only applies to felony offenses)

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## (c) Elements

- a person
- *intentionally or knowingly or recklessly* \*
- transports litter or other solid waste
- to a place that is not an approved solid waste site
- for disposal at the site.

\* (Only applies to felony offenses)

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## Punishment Range

### CLASS C MISDEMEANOR --

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

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## Punishment Range

### 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

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## Punishment Range

### CLASS A MISDEMEANOR

The 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

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## Punishment Range

### CLASS A MISDEMEANOR

The 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

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## Punishment Range

### STATE JAIL FELONY

The litter or other solid waste

- weighs 1,000 pounds or more or
- has a volume of 200 cubic feet or more;

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## Punishment Range -- SJF

The 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

The litter or other solid waste

- is contained in a closed barrel or drum.

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## Enhancement Provision

If prior conviction for offense under this section, punishment is increased to punishment for next highest category.

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## Forfeiture Provision

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.

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## Dumpster Provision

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

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## Temporary Storage Provision

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.

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## Disposal Defense/"Generated"

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

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## Disposal Defense

- (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.

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## Culpable Mental State

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

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## SJF Presumption

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.

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## Commercial Purpose Presumption

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.

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## Affirmative Defense

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

- the storage, processing, or disposal took place on land owned or leased by the defendant;

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## Affirmative Defense

- the defendant received the litter or other solid waste from another person;
- the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and
- the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

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## Section 365.011. Definitions (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

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## “Litter” means:

- (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;

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## “Litter” means:

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

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## “Litter” means:

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

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## (9) “Solid Waste” (Section 361.003 Health & Safety Code)

- (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.

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## “Solid Waste”

The term 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;

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## “Solid Waste”

The term does not include:

- (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

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## “Solid Waste”

The term does not include:

- (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 ...;

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## “Solid Waste”

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

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## Gandy v. State

- Indicted for felony Illegal Dumping
- Jury Trial –Guilty –5 Years Probation, \$10,000.00
- Sham Recycler –Taking in mixed garbage and trash
- Not recyclable –Compacted and Commingled, not source separated
- Construction/Demolition waste and municipal solid waste
- Numerous visits by HCPCD and TCEQ— Illegal solid waste site

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## Gandy v. State

- Gandy did provide some records that he was attempting to recycle at least some of the waste.
- Civil temporary injunction against Gandy, and he was ordered to immediately cease permitting the receipt of solid waste at the site and disposing of the solid waste at the site.
- Evidence convinced jury that Gandy was operating an illegal landfill.

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## Gandy v. State

- Illegal Dumpsite because not economically feasible to separate and attempt to recycle commingled or mixed waste (magician)
- As a result, piles of waste continued to grow

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## Gandy v. State –Appeal

- Opinion filed March 1, 2007 (Affirmed and Published) (PDR filed May 2, 2007)
- No. 14-05-00536-CR
- Court first found that each offense was a separate offense, not just different manner and means of committing one offense.

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## Gandy v. State –Appeal

- Gandy admitted to transporting, disposing and receiving litter.
- The only significant issue at trial was whether Gandy was lawfully operating a *recycling center* or unlawfully operating a *solid waste dump*.

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## Chapter 7, Texas Water Code

### Unauthorized Disposal of Lead-Acid Batteries

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## Section 7.185

### Elements

- a person
- Intentionally or knowingly
- Disposes of a Lead-Acid Battery
- On Land
- And failed to deliver the discarded battery to a battery retailer or wholesaler, a secondary lead smelter, or an authorized collection or recycling facility (361.451 H&S Code)

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## Section 7.185

### Penalty

- A Class A Misdemeanor

### Enhancement Provision – Section 7.188

- If prior conviction, Maximums Doubled

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## New Legislation (SB 239)(HB 2703)

- For Environmental Sanitation & Sanitarians
- Amends Section 38.15(a), Penal Code
- Interfering with Public Duties
- Signed by Governor
- Effective September 1, 2007

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## HB 2703 – New Offense

- A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:
- (a)(7) a person who:
- (A) has responsibility for assessing, enacting, or enforcing public health, environmental, radiation, or safety measures for the state or a county or municipality;
- (B) is investigating a particular site as part of the person's responsibilities under Paragraph (A);

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## HB 2703 – New Offense

- (C) is acting in accordance with policies and procedures related to the safety and security of the site described by Paragraph (B); and
- (D) is performing a duty or exercising authority imposed or granted under the Agriculture Code, Health and Safety Code, Occupations Code, or Water Code.

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## QUESTIONS???

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## Public Nuisances

Health & Safety Code  
Chapters 341 and 343

Primarily deal with Sanitation, Public Health and Public Safety Issues

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## Chapter 341. Nuisance

- Flies
- Sewage, Garbage, Etc.—Disease Medium
- Defective Transport Vehicles—Leakage
- Mosquito Breeding Places—Disease
- Rat Harborage
- Open Surface Privy/Septic Tank—Flies
- Any condition—Medium for Disease

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## Chapter 341.012--Abatement

- Person must have notice/knowledge
- Written Notice – Time to Abate

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

- Sanitary Conditions
- Kitchen waste, Laundry waste, or Sewage may not accumulate in, discharge into, or flow into a public place, gutter, street or highway

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### § 341.013.

- Waste products or polluting material may not be stored or disposed of in a manner that may cause pollution of land, contamination of groundwater or surface water, or breeding of insects or rodents.
- Public Dump – Cover – Insects/Rodents
- Vacant or Abandoned Property – No Public Health Nuisance

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### Chapter 343. Abatement of Public Nuisances

- Accumulating Refuse unless contained in a closed receptacle
- Accumulating Rubbish, Abandoned Vehicles unless completely enclosed in a building or not visible from street
- Unsanitary conditions likely to attract mosquitoes, rodents, vermin, or disease-carrying pests

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### § 343.011. Public Nuisance

- Weeds
- Unsafe Buildings
- Unprotected Swimming Pools
- Flea Markets/Fire Hazards
- Visual Obstructions on Land
- Discarding Refuse
- Filling or Blocking a Drainage Easement (NEW—SB 1238, Eff. Sept. 1, 2005)

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### § 343.012. Criminal Penalty

- Violation of Section 343.011(b); and
- Nuisance unabated after 30 days
- Fine of \$50 to \$200
- If prior conviction – County Court Charge

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### Case Law – Chapter 343

- Kobos v. State
- Abandoned Vehicles – Appealed to County Court
- Kobos said he was using the vehicles for spare parts
- The 14<sup>th</sup> CA held that motor vehicles were not manufactured for use as a spare parts inventory – they were intended as a method of transportation

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### QUESTIONS???

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## Chapter 371. Texas Health & Safety Code

Texas Used Oil Collection,  
Management, and Recycling Act

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## Section 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.

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## Chapter 7. Texas Water Code

Section 7.176.

Violations Relating to Handling of  
Used Oil

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## Section 7.176(a)(1)--Discharge of Used Oil into Water

ELEMENTS

(1) intentionally discharges used oil into:  
(A) a sewer or septic tank; or  
(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless concentration is less than 15 ppm and person has stormwater permit

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## Section 7.176(a)(2)—Disposal of Used Oil on Land or Landfills

ELEMENTS

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

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## Section 7.176(a)(2)—Disposal of Used Oil on Land or Landfills

ELEMENTS

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

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### Section 7.176(a)(3)— Used Oil Management

#### ELEMENTS

- (1) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles
- (2) 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.

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### Section 7.176(a)(4)-Application of Used Oil to roads or lands.

#### ELEMENTS

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

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### Section 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.

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### Section 7.176(d). Criminal Penalties

- (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

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### Section 7.176(d). Criminal Penalties

- 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.

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### Section 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

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## QUESTIONS???

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## WATER POLLUTION

### Subchapter E. Criminal Offenses and Penalties

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## Definitions – Section 26.001.

(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

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## Water in the State

- Drainage ditches  
*Watts v. State*, 140 S.W.3d 860 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2004, pet. ref'd)
- Sanitary sewer lines  
*McGee v. State*, 923 S.W.2d 627 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1995, pet. ref'd)

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## Definitions

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

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## Definitions

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

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## Definitions

(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.

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## Definitions

(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....

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## Definitions

(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.

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## Definitions

(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.

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## Section 7.145(a), Water Code

Intentional or Knowing  
Unauthorized Discharge.

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## Elements(1)

- (1) A person
- (2) Intentionally or knowingly with respect to conduct
- (3) Discharges or allows the discharge of
- (4) A waste or pollutant
- (5) Into or adjacent to water in the state
- (6) That causes or threatens to cause water pollution
- (7) Unless discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency

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## Elements(2)

- (1) A person
- (2) Intentionally or knowingly with respect to conduct
- (3) Discharges or allows the discharge of
- (4) A waste or pollutant
- (5) From a point source
- (6) In violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency

See Chapter 26.121. Unauthorized Discharges Prohibited

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## Definition, Chapter 26.001(21) "Point Source"

- "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."

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## Punishment Range

INDIVIDUAL -- § 7.145(b)

- 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

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## Punishment Range

OTHER THAN INDIVIDUAL--§7.145(c)

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

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## Enhancement Provision §7.188

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

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## Section 7.147(a), Water Code

Unauthorized Discharge  
(Strict Liability)

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## 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

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## Elements

- Or consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.
- SB 1297, Eff. Sept. 1, 2005

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## Punishment Range

**INDIVIDUAL -- §7.147(c)**

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

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## Punishment Range

**OTHER THAN INDIVIDUAL--§ 7.147(d)**

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

**ENHANCEMENT: § 7.188 MAXIMUM punishment DOUBLED.**

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## QUESTIONS???

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