

Chapter 13: Test Yourself

This chapter gives the reader an opportunity to test his or her knowledge of some of the information in this book.

Answer these on a separate sheet of paper and not writing in this book. Leave it clean for the next person.

Part One: Fifty questions.

Q1: True or false: Many city police departments are slow to respond to illegal dumping and other forms of pollution, preferring to push such enforcement off onto municipal code officers.

Q2: Which of the following enforcement approaches may cities and counties NOT do?

- (a) Administrative Rule Enforcement
- (b) State Criminal Law Enforcement

Q3: True or false: If it is 100% on your own property, it is perfectly legal to have a Public Health Nuisance at your residence.

Q4: True or false: As long as local government handles the enforcement process against illegal dumpers, the TCEQ will take responsibility for transporting the waste to the nearest landfill.

Q5: True or false: Municipalities may adopt all or parts of an Administrative Rule and enforce it as a local code.

Q6: Which local officers can be used to enforce state criminal laws against illegal dumping and other forms of pollution?

- (a) Local law enforcement officers (Deputies, Constables, and Police)
- (b) Specialized environmental enforcement officers
- (c) Fire Marshals who are also certified law enforcement officers

- (d) Local Health Authority (when the violation is health related)
- (e) All the above

Q7: What is the most common enforcement approach taken by counties to deal with illegal dumping (THSC Chapter 365 violations)?

- (a) Do nothing
- (b) Actively enforce criminal illegal dumping and other laws against pollution

Q8: In the Texas Litter Abatement statute (THSC Chapter 365) what constitutes a crime?

- (a) Disposing solid waste or litter at any location not approved by the state for disposal
- (b) Transporting solid waste or litter to an unauthorized site for the purpose of disposal
- (c) Receiving solid waste or litter for disposal at any unauthorized location
- (d) Using anyone's dumpster or similar container without their permission
- (e) All the above

Q9: True or false: Except in a very few situations, a person cannot dispose of litter and solid waste on his own property without committing a crime.

Q10: True or false: Before it can enforce THSC Chapter 365, the city or county must formally adopt that law.

Q11: True or false: In abating Public Health Nuisances, Local Health Authorities actually have no statutory role.

Q12: True or false: Under THSC Chapter 341, Justice and Municipal Courts in setting penalties in Public Health Nuisance Cases MUST order the abatement of the nuisance in all cases.

Q13: True or false: In THSC Chapter 365 Illegal Dumping cases, "Each day of a continuing violation is a separate offense."

Q14: Which of the following is NOT true of a Public Health Nuisance as defined in THSC Chapter 341?

- (a) A useful definition of a Public Health Nuisance is found at THSC Sec. 341.013(c).
- (b) "Each day of a continuing violation is a separate offense."
- (c) The Local Health Authority has an extremely important role to play in the abatement process.
- (d) Public Health Nuisances must be prosecuted within two years of their being created (Statute of Limitations).

Q15: True or false: Most criminal environmental statutes include a mandatory 30-day written warning from the local government before citations can be issued.

Q16: True or false: Persons convicted of illegal dumping (i.e., violating THSC Chapter 365) at ANY weight or volume level are also required to perform 1 to 60 hours of community service as directed by the court.

Q17: What is the penalty for using waste oil for weed suppression, fence post treatment, dust suppression, pouring it down storm drains, or otherwise putting this waste into the environment in violation of TWC Sec. 7.176?

- (a) Class C Misdemeanor
- (b) Class A Misdemeanor
- (c) State Jail Felony, regardless of the volume of used motor oil disposed
- (d) Special felony of a fine to \$50,000 and/or imprisonment to 5 years, regardless of the volume of used motor oil dispose

Q18: What is the penalty for dumping lead-acid batteries, such as car, boat, motorcycle, and lawn mower batteries?

- (a) No penalty is set for this common practice
- (b) Class C Misdemeanor
- (c) Class B Misdemeanor

- (d) Class A Misdemeanor
- (e) State Jail Felony

Q19: Of the parties involved in illegal dumping and its enforcement (listed below), who is usually working the hardest?

- (a) The illegal dumper himself
- (b) The law enforcement officer who is attempting to find and arrest him
- (c) The County or District Attorney responsible for imposing penalties
- (d) The Local Health Authority responsible for forcing the abatement if the situation includes a THSC Chapter 341 violation
- (e) The elected officials being criticized by the voters for failure to enforce state laws

Q20: True or false: THSC 365, THSC 341, and THSC 343 must be formally adopted by commissioners court in any county that wants to enforce these laws.

Q21: Which of these is the best choice to describe the penalties available for use in enforcing THSC Chapter 365?

- (a) Fines; confinement
- (b) Community service [1 to 60 hours mandatory for illegal dumping conviction under THSC Chap 365.012(s); also, cleaning dump sites often part of plea agreements]
- (c) Self-interest of dumper to avoid being designated a felon
- (d) Publicity and public embarrassment
- (e) Violator education
- (f) Warnings and threats of the above
- (g) All of these above

Q22: True or false: Local Government Code Sec. 54.001 allows cities to impose a fine of up to \$4,000 for code violations related to trash or refuse, regardless of any lower limits set by a city's charter.

Q23: True or false, Although municipal code enforcement in Texas is the single greatest source of environmental protection, by itself it is not unable to respond to criminal dumping.

Q24: The official State definition of a “scrap tire” is:

- (a) One with a tread depth of less than one-sixteenth of an inch on two adjoining treads
- (b) A whole tire that can no longer be used for its original intended purpose
- (c) One that looks bald to the safety inspector

Q25: Police officers are generally not exposed to Texas criminal laws covering illegal dumping in their basic police academy training.

Q26: True or False, THSC Chapter 341 is applicable anywhere in Texas, but THSC Chapter 343 is applicable only in certain non-agricultural locations in the unincorporated areas of the state.

Q27: True or False, Since the maximum fine for having a Public HEALTH Nuisance on property one “possesses” (either as the owner or as a renter) is only \$200, there is very little financial reason for a violator to comply.

Q28: True or False, Persons who have registered with the state as a tire generator can NOT be charged with violating criminal environmental laws.

Q29: True or False, Cities can adopt local scrap tire ordinances that may be more stringent than the state administrative requirements defined in Rule 328, Subchapter F.

Q30: True or False, burn bans imposed by a commissioners’ court can stop all forms of open burning in unincorporated areas.

Q31: True or False, JPs and Municipal Judges may legally order an abatement upon conviction of a violation under THSC Chapter 341.

Q32: What kinds of local government responses should normally happen in Public HEALTH Nuisance cases handled through using THSC Chapter 341?

- (a) A citation should be issued for the criminal offense
- (b) Provisions should be made to have the Public HEALTH Nuisance abated
- (c) Both of these things should happen
- (d) Neither of these things need to take place

Q33: Who of the following may NOT issue a citation for a criminal violation of THSC Chapter 341 and/or THSC Chapter 343?

- (a) Peace officers
- (b) Local Health Department investigators (if the commissioners court agrees)
- (c) A county employee trained by an appointed health authority (if the commissioners court agrees)
- (d) Code enforcement officers

Q34: True or False, Local Health Departments organized under THSC Chapter 121 usually follow the procedures at THSC Sec. 341.012 to make sure Public Health Nuisances are abated.

Q35: Which of these is correct?

- (a) Almost all counties in Texas have a Public Health Department
- (b) Almost all counties in Texas have a Public Health Authority
- (c) This is a trick question; they are the same thing
- (d) Very few Texas counties have either of these

Q36: True or False, THSC Sec. 341.013(c) is a good general provision that can often be applied to respond to Public HEALTH Nuisances.

Q37: True or False: a person affected or to be affected by a violation under Chapter 343, including a property owner, resident of a neighborhood, or organization of property owners, may seek an injunction to stop or prevent a violation of that chapter.

Q38 : True or False, counties may adopt procedures allowing them to abate THSC Chapter 343 Public Nuisances in certain unincorporated areas using taxpayer money and set a lien.

Q39: Which of these is correct?

- (a) There is a 30-day statutory warning period before a citation can be issued for a THSC Chapter 343 violation
- (b) There is a 30-day statutory warning period required before a citation can be issued for a THSC Chapter 341 violation
- (c) Both of these laws contains a 30-day statutory waiting period before a citation can be issued

Q40: True or False, officers working in the unincorporated areas of the county should pick either THSC Chapter 341 or Chapter 343 and use that one. Officers in the unincorporated areas shouldn't attempt to use both laws.

Q41: True or False, police inside cities can use both THSC Chapter 341 and THSC Chapter 343 as the situation requires.

Q42: True or False, THSC Chapter 341 is generally not applicable to scrap tires.

Q43: True or False, successful use of THSC Chapter 341 and THSC Chapter 343 depend on close, exact following of the definitions included in each law.

Q44: True or False, employers are under no particular requirement to keep their businesses in a sanitary condition.

Q45: True or False, THSC Chapters 341 and 343 are great laws, but unless they are formally adopted by a local government, they are not in force in that city or county.

Q46: True or False, just about all Texas cities and counties have created a Local Health Department as allowed in THSC Chapter 121.

Q47: True or False, illegal dumping and water pollution criminal violations often also generate accompanying Public Health Nuisance violations.

Q48: True or False, under THSC Chapter 341, the peace officer issuing the citation to the alleged violator has the responsibility of assuring that the violator abate the underlying mess.

Q49: True or False, often the key to getting local police to work with city code enforcement officers by using THSC Chapter 341 when the police or code see violations are discussions between the Chief of Police, head of code enforcement, and the city manager.

Q50: Which of the following statements is false?

- (a) Because of the COVID-19 pandemic, many citizens became more aware of public health issues
- (b) THSC Sec. 341.013(c) is a handy law to use in controlling Public HEALTH Nuisances anywhere in Texas
- (c) In Cities there is an enormous overlap between code violations and Public HEALTH Nuisances (THSC Chapter 341), especially THSC Sec. 341.013(c).
- (d) In Cities, if a situation is not responding to code enforcement, rather than keep fighting over code, another approach is to raise the level of enforcement by moving to using criminal law, beginning with THSC Chapters 341 or 365.
- (e) In unincorporated areas, although THSC Chapter 343 is designed to deal with Public Nuisances in rural areas, there are a number of reasons that using THSC Chapter 341 out in the unincorporated areas is a better idea
- (f) No 30-day warning required under THSC Chapter 341 (but this is required under THSC Chapter 343)
- (g) Only one trip by a law enforcement officer is required to issue a citation under THSC Chapter 341;
- (h) Public Health Nuisances under THSC Chapter 341 REQUIRE the Local Health Authority to work on the abatement of the nuisances with the violator and prosecutor (THSC Sec. 341.012)
- (i) THSC Chapter 341 applies throughout cities and in ALL unincorporated areas, but THSC 343 forces the officer to be sure of exactly where the violation occurs because it only

applies to SOME rural areas.

(j) There are two big challenges remaining in using these two laws effectively: (a) Getting local police involved in those few situations where you need to use THSC Chapter 341 instead of municipal codes; and (b) Getting local health authorities more aggressive in enforcing THSC Chapter 341.012(b)-(d).

(k) Law enforcement officers should buy ice cream for violators they are citing under either of these two laws

Part Two: Answers and Explanations.

Q#	Ans	Explanation
Q1	T	Too often local police fail to respond to requests for enforcement from code officers, even when the violation is a felony. This may well be simply from lack of knowledge of the crimes involved, may represent a severe staffing issue in local law enforcement agencies ("We only have time to respond to REAL crimes!"), or may be a bias against the entire concept of criminal environmental enforcement ("A man should be able to do what he wants with his own property!"). All of these can be fixed.
Q2	(a)	Only agencies of the state, such as the TCEQ and Railroad Commission, may enforce Administrative Rules.
Q3	F	It is never legal to have a Public Health Nuisance on your own property, nor is it ever permitted to be responsible for creating or maintaining a Public Health Nuisance anywhere. However, because of low levels of enforcement, Public Health Nuisances are common throughout Texas.

- Q4 F If a waste dumping site is abated, the work will be performed or managed by local entities. When ordering the abatement of waste, local governments and courts should always require a landfill receipt.
- Q5 T Many cities do this. An example is the City of Houston and about 20 other cities adopting parts of the rule controlling scrap tires as their own municipal code. Another example would be a city adopting as a local ordinance the Texas Outdoor Burning Rule.
- Q6 (e) All these entities can be used to enforce state criminal laws against illegal dumping and general pollution.
- Q7 (a) Unfortunately, the most common response to illegal dumping in many counties is still to do nothing, usually out of ignorance on how to proceed. This can be overcome with training and reading. Eventually, as they become more educated the public will demand enforcement.
- Q8 (e) See THSC Section 365.012 for a description of each of these four criminal violations.
- Q9 T The fact that the dumping occurs on private property usually makes no difference; illegal dumping is still a crime. See THSC Sec. 365.012(l) for a discussion.
- Q10 F With just a very few exceptions, the adoption of criminal laws in Texas is an action reserved to the State Legislature. That is true with THSC Chapter 365: it has already been adopted by the State Legislature.

- Q11 F One of the reasons we have so many unabated Public Health Nuisances in Texas is that Local Health Authorities, for any number of reasons, do not follow their statutory responsibilities to oversee abatement as defined in THSC Sec. 341.012.
- Q12 F Judges in THSC Chapter 341 Public Health Nuisance cases have no statutory authority to order the abatement of the Public Health Nuisance if the person is found guilty of this crime.
- Q13 F The notion that "Each day of a continuing violation is a separate offense" appears in most environmental crimes. In THSC Chapter 365 the offense happens one time: when the violator dumps the solid waste or litter. The dumping usually has also created a Public Health Nuisance immediately when dumped, and this nuisance persists. That day and each subsequent day it was there the waste continued to be present is a separate Public Health Nuisance.
- Q14 (d) Public Health Nuisances are not subject to the Statute of Limitations. Every day they exist, now and historically, constitute a separate offense.
- Q15 F Only THSC Chapter 343 (used to handle Public Nuisances in some unincorporated areas) has such a requirement. No other criminal environmental law requires any warning at all before enforcement.
- Q16 T THSC Sec. 365.012(s) sets such a requirement. Some jurisdictions, when faced with dumping by poor people, set a very low fine and direct the violator to perform community service picking up "litter" as defined under THSC Chapter 365.

- Q17 (d) Since Texas is a water-limited state and motor oil is a perfect pollutant of water, the State Legislature has set a very high penalty for dumping it just about anywhere your father might have recommended.
- Q18 (d) Texas Water Code Sec. 7.185 sets an A Misdemeanor for disposing any lead-acid battery other than as provided for in THSC Sec. 361.451. Work out with your prosecutor what form he or she would prefer proof of the pH (usually around 0.8) of the battery to take.
- Q19 (a) With due respect to all the fine local government officers and officials interested in stopping illegal dumping, only the dumper himself is financially incentivized to work ever harder, day by day.
- Q20 F The state legislature has already adopted these three criminal laws, and they may be immediately enforced.
- Q21 (g) All of these are available, although few cities or counties use all of these options.
- Q22 T \$4,000 is the maximum fine of a Class A Misdemeanor, which in THSC Chapter 365 would be the same as set for commercial dumping of between 5 and 200 pounds. However, for a code violation no particular volume of waste are required to reach the higher \$4,000 fine cap.
- Q23 T Code, criminal enforcement, and health officials must cooperate to effectively deal with pollution in Texas cities. In unincorporated areas, code can't participate so the burden falls even more on law enforcement and health authorities.

- Q24 T The administrative code used by the TCEQ to regulate scrap tires in Texas has no measurement, one-sixteenth of an inch or otherwise, in its definition of what constitutes a scrap tire.
- Q25 T Environmental Law Enforcement training is generally not included in the initial professional training received by law enforcement officers, nor is it included in training received in Texas law schools.
- Q26 T Where these laws apply is determined by the State Legislature. THSC Chapter 341 has always applied to ALL of Texas, but THSC Chapter 343 has always been restricted in some manner. Since THSC Chapter 341 is a lot easier to use and applies everywhere in the county, we suggest that law enforcement officers use this law as the beginning of their environmental enforcement efforts.
- Q27 F THSC Sec. 341.091(c) states "EACH DAY of a continuing violation IS a separate offense." This language allows the court to set very large penalties for ongoing violation if that will help get the violator's attention and get the cleanup underway: \$200 per day becomes \$1,400 per week; \$6,000 per month; and, \$72,000 per year. Often these violations have been going on for months or even longer. Once the judge explains to the violator the potential fines he or she faces for allowing a Public HEALTH Risk to exist on property they control, the violator usually suggests a sound cleanup plan.
- Q28 F Even though a tire dealer or other person is complying with all state administrative rules in handling scrap tires, he may be creating a Public Health Nuisance or breaking some other criminal law, such as illegal dumping. "Registration" is not a permit to break state criminal laws.

- Q29 T The authorizing provision reads: *30 T.A.C. Section 328.52. Applicability. (a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that are as or more stringent than the regulations in this subchapter.*
- Q30 F There several things burn bans can't stop, including firefighter training and some agricultural processes.
- Q31 F JPs are mandated to order abatement upon conviction of THSC Chapter 343 violations. However, Chapter 341 is silent as to a JP or Municipal Court judge having the authority to order an abatement of the Public HEALTH Nuisance upon conviction. In Chapter 341, the process at Sec. 342.012 will, if followed, result in a different judge ordering the abatement of a Public HEALTH Nuisance.
- Q32 (c) Until the Public HEALTH Nuisance abated, the problem remains. A citation should normally be issued to put the violator before a judge to answer for his commission of the violation. Independently, the nuisance must be abated. So, there are two issues in dealing with Public HEALTH Nuisances: (1) the citation and punishment for having the nuisance on one's property; and (2) working with the violator and local prosecutor, if need be, to get the nuisance cleaned up.
- Q33 (d) Since these are criminal laws, peace officers can issue citations as specified in each (that is, immediately for a THSC Chapter 341 violation and following a 30-day warning period in the case of THSC Chapter 343). Local Health Department investigators and others designated by THSC Sec. 121.003(c) may also issue citations, if authorized

by their county. Code enforcement officers may not issue citations when they are functioning as code enforcement officers. Even though they can't issue citations or make arrests, it's important that code enforcement officers know the criminal laws in THSC Chapter 341 well. After all, inside cities code enforcement officers are most likely to be the first to see a criminal violation.

- Q34 F I cannot locate any Local Health Department in Texas that is actually following the mandated process at Sec. 341.012. Usually, when the violator won't voluntarily abate the problem, the Local Health Department issues a citation that results in a violator appearing before a JP on the charge of having the Public HEALTH Nuisance. When Local Health Departments do this, it is usually because they have become frustrated by the failure of the violator to follow their abatement order and put on their "law enforcement hat." By doing so they abandon the process specified at THSC Sec. 341.012, which assures that the mess will be unabated for a longer period of time than if they had actually followed the statute.
- Q35 (b) The Local Health AUTHORITY is a physician appointed locally under the authority of THSC Chapter 121 LOCAL PUBLIC HEALTH REORGANIZATION ACT. A Local Health DEPARTMENT is an organization that local government may optionally create around the Local Health AUTHORITY, again as authorized under THSC Chapter 121. Just about all Texas counties have a Local Health AUTHORITY or are part of a multi-county Health District with such an official.

- Q36 T There are twelve separate practices and situations specified as constituting a "health nuisance" at THSC Sec. 341.011. However, the general statement of a violation at THSC Sec. 341.013(c) is often all the officer needs to identify a violation. If an officer is standing anywhere that is a living and/or breeding place for mosquitoes, rats, and other disease carrying pests, he or she is most likely standing at a Public HEALTH Nuisance and can cite the property possessor.
- Q37 T This law may be used to protect the rights of affected parties in rural areas of Texas. Not only can the county base a request to the court for an injunction against further violations, but affected citizens may also act to protect themselves from having to be subject to public nuisances. The applicable section of the law lists "property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood" as being among those who can seek an injunction in the same manner as the county. See THSC Sec. 343.013(b).
- Q38 T Subchapter C of THSC Chapter 343 details the contents of the provisions that allow counties to abate rural Public Nuisances as long as they follow the requirements in that Subchapter. An alternative to adopting a set of abatement rules might be pressing the Local Health Authority to act as mandated under THSC Sec. 341.012.
- Q39 (a) There is a 30-day warning from the county required before a THSC Chapter 343 citation can be issued, but no waiting period requirement before issuing a THSC Chapter 341 citation.

- Q40 F Smart county officers use both of these laws, although they may find that THSC Sec. 341.013(c) often works best in most situations. If there were several days of multiple violations involved OR if the violator was himself an attorney who wanted to show how “Nobody is the boss of me!” those small errors possible under THSC Chapter 343 could result in the loss of a case. Use both of these laws as the situation calls, but if you have to use one only, I’d push that one to be THSC Chapter 341.
- Q41 F Only THSC Chapter 341 applies inside the city limit AND in ALL unincorporated areas. Chapter 341 a good law that peace officers can use anywhere in Texas. THSC Chapter 343 , however, is only applicable to non-agricultural parts of unincorporated areas ... and even then some of the specific subsections might only apply to platted subdivisions. Inside cities, police who are supporting code enforcement efforts (or in the 25% of Texas cities not having code enforcement) generally are advised to begin with THSC Chapter 341.
- Q42 F Both THSC Chapter 341 and THSC Chapter 343 can be used to control the Public HEALTH Nuisance and Public Nuisance aspects of scrap tires. Scrap tires are mosquitos favorite place to live, lay eggs, and raise a family. Such mosquito habitats should be eradicated from Texas.
- Q43 T Successful use of any criminal environmental law is based on close, accurate following of any definitions that are included in the statute. Exacting definitions are more frequently encountered in criminal environmental statutes than in the laws found in the Penal Code.

- Q44 F THSC Sec. 341.013(a) states that "Premises occupied or used as residences or for businesses or pleasure shall be kept in a sanitary condition" with the word "sanitary" having an exact definition. Additionally, THSC Sec. 341.016 requires a place of business to be kept safe for employees: "A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur."
- Q45 F The State Legislature has created virtually all other criminal laws for statewide use. Local governments can neither "adopt" nor "repeal" a criminal law. If the State Legislature passes a criminal law and the governor signs it, it applies to the designated areas without further local actions. The only question is whether or not the laws are being used by local governments. BUT don't confuse the fact that both of these laws have already been adopted by the State Legislature and are ready for immediate use in your jurisdiction.
- Q46 F However, only about 125 have actually done so. In a few cases, these are city/county or multiple county health districts. However, virtually all counties in Texas have appointed a Local Health Authority. This is a physician who is a sworn state officer (when he or she is functioning as the Local Health Authority). Under Sec. 341.012 these individuals have responsibility to make sure Public HEALTH Nuisances are abated by the responsible party.

- Q47 T Both of these polluting activities usually generate additional Public HEALTH Nuisance or Public Nuisance criminal violations. A violation of THSC Chapter 341 or Chapter 343 can be a "stand alone" event or can be generated by another violation. If a certain behavior, legal or not, generates a Public Nuisance or Public HEALTH Nuisance, the violator should be cited.
- Q48 F Peace officers do not cleanup crime scenes. Working with a violator to abate a Public HEALTH Nuisance falls ON the Local Health Authority, according to the State Legislature under THSC Sec. 341.01
- Q49 T Discussions between the managers usually resolves these issues, which frequently includes lack of specific knowledge of the content of these laws. When the correct policy decision -- which is that the city should enforce all Texas criminal statutes, without favor to any party -- is reached, detailed officer training is then usually required. If the management team does not arrive at the correct policy decision, the city attorney, mayor, and council may have to become involved.
- Q50 (k) With the exception of buying ice cream for the violator, all of these other points are a good review of these two laws and their use.