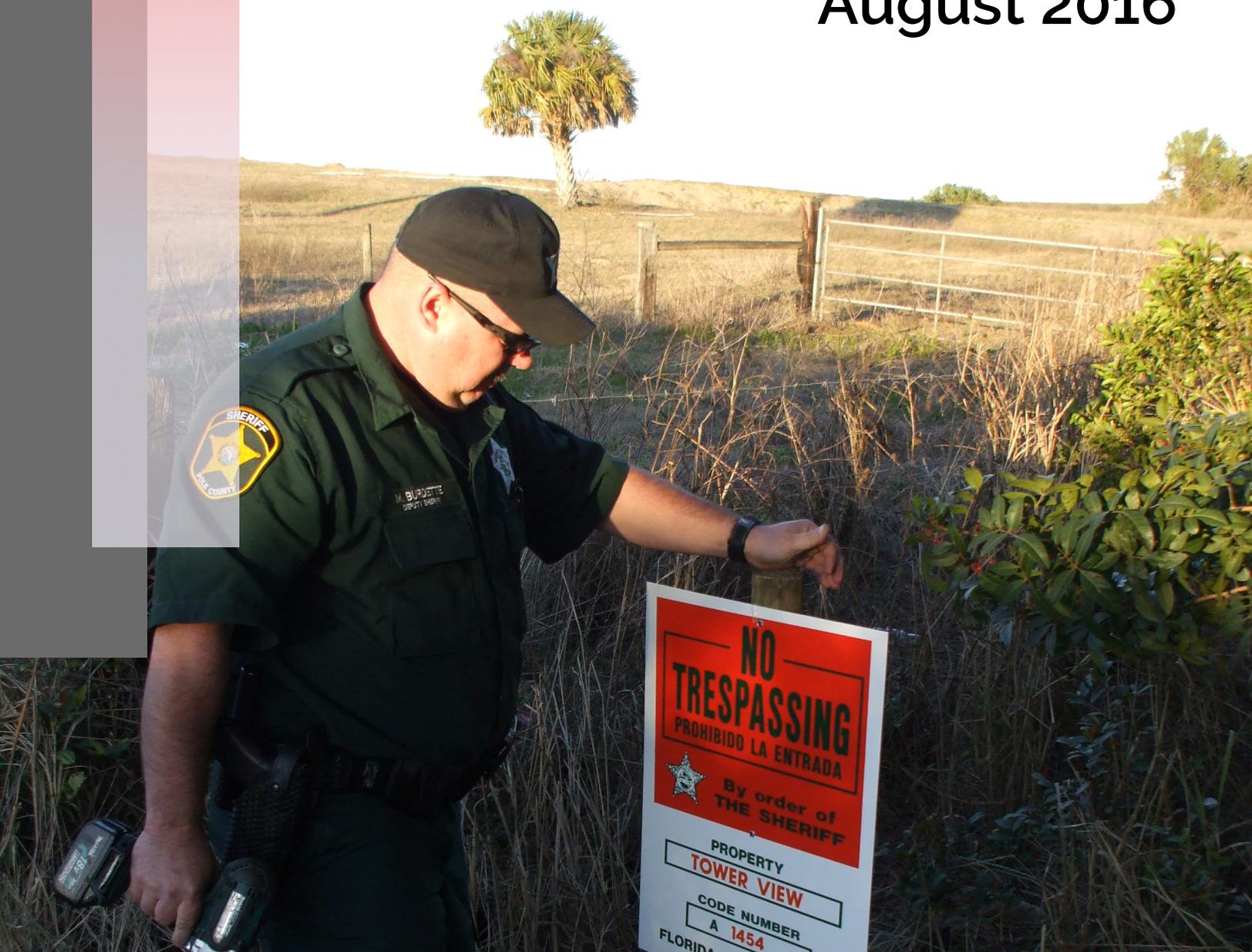


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Enforcement and Prosecution Guide

August 2016



Acknowledgments

We would like to acknowledge the many individuals who shared their insights and experiences to help shape this Guide. A shared passion for stopping littering lends itself to cooperation among many organizations and individuals sharing this goal. Individuals who contributed are listed in the “References and Resources” section, and include law enforcement officers, environmental agency staff, KAB affiliates, and officers and employees of court systems.

We would particularly like to acknowledge the expertise and guidance provided by John Ockels of the Texas Illegal Dumping Resource Center, and the following KAB affiliates: Keep Pennsylvania Beautiful, Keep Arizona Beautiful, and Keep Iowa Beautiful, for the use of their effective resources. Lastly, for taking the time to provide valuable feedback on the draft Guide, we are grateful to Heidi Pedicone, Sue Urchek and Fred Siekkinen of Keep Pennsylvania Beautiful.

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How to Use this Guide:

Throughout this Guide, the reader has the opportunity to “jump” from one location to another. Clicking on any item in the table of contents will take you to that section. Clicking on a heading or subheading title will take you back to the table of contents. Clicking on a topic or word in blue font will take you to the referenced item (e.g., an appendix or external resource). For internal links, clicking on the appendix title will take you back to the original location in the Guide.

In addition, provided throughout the Guide are several interactive pages where you are encouraged to fill in information, for brainstorming and planning purposes. The Guide can then be re-saved under a different file name, and selected pages printed for reference.

Please report any broken links to: litter@kab.org

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1. Introduction

About Keep America Beautiful

At Keep America Beautiful, we want to ensure that beauty is our lasting signature. A leading national nonprofit, Keep America Beautiful inspires and educates people to take action every day to improve and beautify their community environment. We envision a country where every community is a clean, green, and beautiful place to live. Established in 1953, Keep America Beautiful provides the expertise, programs and resources to help people end littering in America, increase recycling in America, and beautify America's communities. The organization is driven by the work and passion of more than 600 community-based Keep America Beautiful affiliates, millions of volunteers, and the support of corporate partners, municipalities, elected officials, and individuals. To learn how you can donate or take action, visit kab.org. Follow us on [Twitter](#) and [Instagram](#), like us on [Facebook](#), or view us on [YouTube](#).

Purpose of Guide

The purpose of this guide is to provide those trying to stop litter (such as local governments, code and law enforcement officers and Keep America Beautiful affiliates) with guidance and resources to enhance their litter and illegal dumping enforcement programs. In addition to this guide, KAB has developed a general Litter and Illegal Dumping Curriculum, which provides more broad and holistic guidance. In addition KAB has developed Collaboration Guide, which provides guidance to organizations regarding how to collaborate with others to work toward stopping litter and illegal dumping. Also, KAB has developed a model ordinance and a literature database pertaining to litter and illegal-dumping. See www.kab.org for more information.

What Constitutes Litter/Illegal Dumping?

Litter is defined as trash, debris, and other items that have been discarded improperly including along roadsides and in waterways or otherwise uncontained or improperly managed. Illegal dumps are the result of egregious acts of littering. Littering and illegal disposal may result from both intentional and unintentional actions. For example:

- **Intentional littering** -- dropping or placing trash somewhere other than a receptacle intended for this purpose.
- **Unintentional littering** -- items are managed in a way that they may become litter including in the back of trucks that are not covered properly or stacked on top of an overflowing dumpster.



Photo 1: Clayton County, GA

Illegal dumping and litter occur in all types of communities – urban, suburban, and rural, often in more discrete locations that cannot be readily seen from the roadway. Illegal dumping may also include a

property owner who accumulates waste on their own property. This is usually a violation of local codes, but may be a more serious offense if it poses a risk to local waterways or poses a health or sanitation risk.

Some illegal dumping cases are driven by greed. An individual may accept trash and accumulate it on his own personal property (sometimes referred to as “trash for cash”) or as an illegal business, with no intention of properly managing the material. This has been known to occur with used tires, electronics, landscaping debris, and construction and demolition debris, which can be relatively costly to manage properly.

Laws without enforcement are just good ideas – Abraham Lincoln

There are many types of illegal dumping and littering violations, all of which can lead to additional littering and illegal disposal or other criminal activity if the sites are not remediated, and if the incidents are not taken seriously by the law enforcement community.

Importance of Enforcement

Proper enforcement of littering and illegal disposal are key to stopping this behavior. Those who intentionally litter and illegally dump waste do so because, on some level, they believe it is worth the risk. This means they perceive that they will not get caught, or, if they are caught, will not face severe financial or criminal repercussions. Those who litter due to negligence (e.g., not securing a load of trash properly in a vehicle, or overfilling a lidded trash can such that debris becomes windblown) will become more cognizant of their actions if they face enforcement. Enforcement is a way to send the message to violators, and society in general, that this type of activity is not acceptable. Similarly, if egregious violators, like unscrupulous businesses that dump illegally, are caught and prosecuted, others will see that such practices are not worth the risk. Successful enforcement, as is described throughout this guide, involved the collaboration and support of many stakeholders.

Not only is it important to stop litter through enforcement and education, but it is also important to clean up litter, as litter begets litter. As has been proven time and time again, the Broken Windows Theory holds true – communities that appear neglected are more prone to more significant acts of crime (see text box).

The Broken Windows Theory Prompts Broken Windows Policing

The “broken windows theory” refers to an observation made in the early 1980s by Mr. George L. Kelling, a criminologist, and Mr. James Q. Wilson, a social scientist, that when a window on a building is broken and left in disrepair, it is not long before other windows of the building are broken. The state of the building sends a message to others that no one cares about the building, thus inviting more abuse, and possibly leading to additional crimes. Essentially, it starts a downward spiral of lack of caring and sense of responsibility. In response to this theory, “broken windows policing” whereby police focus on smaller crimes to disrupt the cycle, was established. When neighborhoods are kept under stricter control, residents have less fear and withdrawal. While some critics see this policing tactic as overly aggressive, the intent is to reverse disruption in a neighborhood before it leads to crime.

2. Litter-Related Laws and Ordinances

There are many types of laws, rules, ordinances and policies that relate to litter. They provide the “backbone” of enforcement as they convey expectations and allow law enforcement officers to take action when laws are not obeyed, and allow judges to sentence, based upon the sentencing guidelines in the law.

State laws address litter, water pollution, and transportation of waste, at a minimum, and typically authorize local law enforcement agencies to provide enforcement. There are other litter-related state laws/rules that may be enforced by local agencies, such as littering that occurs on state-owned land or waterways and rules that pertain to the permitting of solid waste facilities. Depending upon the type of material littered or illegally disposed and the type of material (e.g., hazardous substances in waterways) federal laws may also come into play. Local ordinances are municipal/county laws which, when violated, may result in infractions/violations, misdemeanors or sometimes felonies. Laws can be civil, criminal or administrative in nature.



Photo 2: Louisiana DEQ

In addition to state-level laws and local-level ordinances, there are also state-level administrative rules and regulations that may be enacted by state agencies, such as departments of natural resources, forestry, fish and wildlife, state parks, etc. Officers of these agencies can typically enforce a state criminal law, but might prefer to use an administrative process if a license or permit is issued by the agency to the offending individual (e.g., a solid waste facility permit, a commercial fishing license, etc.), as this can be a swifter and meaningful penalty or deterrent.

There is no one specific way litter-related state laws or local ordinances are structured, so content may overlap between different laws and ordinances, and similar laws/ordinances may have different names in different regions of the country. It is important, however, that laws are adequate to cover all litter-related/illegal disposal circumstances, and that local law enforcement and code enforcement officers have a clear understanding of the laws, their authority to enforce the laws, and they take them seriously. In some states local ordinances cannot cover the same violations that state laws do. In others some laws at the local level must, by state law, be at least as strict as the state law.

Who Enforces?

Typically enforcement of litter-related laws, even state laws, occurs at the local level. The titles of the enforcement officers differs in different states, but might include peace officers, local police officers, sheriffs, sheriffs' deputies, fire marshals, constables, representatives of state or federal agencies (depending on the location of the violation) such as environmental, parks, and wildlife agencies, and other sworn law enforcement officers, Code enforcement officers are generally authorized to enforce local codes only.

Enforcement-Related Terms:

Infraction/Violation – An infraction (or violation in some states) is a general name for a criminal offense that is less severe than a misdemeanor. Often infractions are paid with community service hours, probation, or fines.

Misdemeanor -- In criminal law, a misdemeanor is a general name for criminal offenses of every sort, punishable by indictment or special proceedings, which do not in law amount to the grade of felony. Misdemeanors are typically punishable by fine, probation, community service hours, up to one year in jail, or a combination of those penalties, but not imprisonment.

Felony – A felony is a more serious breach of criminal law than a misdemeanor, with a potential penalty of a year or more in prison and/or a fine.

Criminal Offense – A criminal offense may result in jail time. Within criminal offenses there are misdemeanors and felonies. Also, those convicted of criminal offenses have a criminal record.

Civil Offense – Civil offenses generally cannot result in jail or prison time. In general, most states treat a littering offense of a small quantity or a first-time offense as a civil offense, and the offender therefore cannot be sentenced to jail.

Administrative Law -- The body of law that governs the activities of administrative agencies of government. Government agency action may include rulemaking, adjudication, or the enforcement of a specific regulatory agenda. Often penalties may include revocation of a permit or license as well as fines.

Following is a description of some of the most significant laws/ordinances meant to stop litter and/or illegal disposal.

Litter/Illegal Dumping Laws

State and local laws that stipulate what constitutes littering and illegal dumping and the penalties against such crimes. Local law enforcement officers are usually authorized to enforce both local and state-level laws.

Water Pollution Prevention Laws

State laws, primarily, that protect the waterways of the state. These are typically enforced by local law enforcement, but could also be enforced by state environmental agency enforcement officers or state law enforcement officers.

Solid Waste Laws

Solid waste ordinances and/or laws typically describe the following:

- Responsibilities of resident and businesses for setting out trash in a responsible manner such that trash/ recyclables do not become littered;

- Responsibility of haulers to collect with care and ensure loads are properly covered to avoid scattering of materials;
- Responsibility of residents and businesses to ensure loads are properly covered;
- Residents and businesses are not to dispose of litter in another property's container (doing so constitutes theft of service) or on another person's property (doing so constitutes illegal disposal);
- Property owners must ensure that waste is not stored/stockpiled on property for more than a specified period of time.



Photo 3: The Whistler News.

Abandoned Vehicle Laws

Many states and local governments have abandoned vehicles ordinances in place. They stipulate that non-operating (or unregistered and/or uninspected) vehicles must not remain in property beyond a certain period of time, or limit the number of such vehicles that may remain on the property or require that they be stored inside a garage.

Laws At-a-Glance

Those involved in enforcing litter and illegal dumping laws have a multitude of litter-related laws to be familiar with, along with other laws and the many other aspects of their duties. Having an “at-a-glance” reference of applicable laws may help them identify the possible crimes, penalties, and responsible parties for enforcement. The Texas Illegal Dumping Resource Center has several such “[field references](#)” available for Texas enforcement officers.

Abandoned Vessels/Property

Areas with marinas/docks often have ordinances that allow for the removal of abandoned vessels and property after proper notification (often including publication in newspaper of record) of owner and a specified (e.g., 30 days) waiting period.

Property Neglect/Nuisance

Often at the state and local levels, these laws stipulate that allowing litter to stockpile on property is a violation of the nuisance ordinance/code, and describes penalties allowed under conviction of such crimes. Often a fine may be applied on a daily basis. This may be included in the state or local government's health code.



Photo 4: Detroit2020.com

Temporary Sign Ordinances

Temporary signs must be removed within a certain time period (e.g., 10 days) of the advertised event date. The ordinance may require a permit for certain types of signs. Some limit the number of signs that can be posted on a property. These are typically local-government ordinances that are enforced by code officers or local law enforcement officers.

Management of Specific Material Types

Examples include scrap tires, lead-acid batteries, appliances, medical waste and hazardous wastes. These are typically state-level laws.

Ordinances for Specific Locations/Events

Describes the illegal nature of littering at a specific location or type of location (e.g., beaches). Similarly, some local governments have ordinances in place for how materials are to be managed at events such as festivals on public property. These are in place primarily to encourage recycling/composting, but can also be used to ensure proper steps are taken to avoid litter being generated at the event.

KAB has developed a model ordinance that local governments can use to develop or update their own ordinances, and it also working with individual states to develop state-specific litter and illegal dumping laws. Please see www.kab.org for more information.

Litter Laws in My Community:

1) The litter illegal dumping laws/ordinances most commonly enforced in my community are:

2) They are enforced by:

3) Penalties are typically: _____

4) Litter/illegal dumping laws are are not (circle one) adequately enforced.

5) Enforcement could possibly be enhanced by: _____

Related Policies and Ordinances:

Some states and local governments have implemented other types of ordinances that are not included in the litter or illegal dumping ordinances, but are intended to have a positive impact on litter and illegal dumping. They include:

Smoking Bans – Smoking bans often limit smoking to specific locations on state property, which allows for the provision of receptacles.

Advance Disposal Fees (ADFs) – ADFs are fees that are charged on certain products when they are purchased, which fund a material collection and recycling program. Examples of such products include motor oil, tires, mattresses and paint.

Bans/Deposits on Specific Packaging Types – Some states and municipalities have adopted policies to ban the use of certain types of packaging or other goods, or allow/mandate the charge of a fee for the use of them to discourage use. Examples include plastic bags and expanded polystyrene takeout food containers and cups. Some local governments have implemented bans on the use of food service ware and packaging that is not compostable or recyclable. Similarly, 10 states have bottle deposit systems in place. These programs encourage recovery of the covered container types in lieu of littering or improper disposal.

3. Roles and Responsibilities in Enforcement and Prosecution

There are many different people, agencies and departments involved in enforcing litter and illegal dumping laws. Who enforces a law depends upon the offense – which codes, ordinances or laws are being violated, and who has the authority to enforce the law in the jurisdiction. Where the case is adjudicated also depends upon the offense and, typically, the location of the crime.

Table 1: Offense Locations and Possible Enforcement Officers

Location of Offense	Possible Enforcement Officers (Types of Laws)
Waterway	State Environmental Agency (state laws, administrative rules) Local Harbormaster (state laws, local ordinances) Local law enforcement (state and local laws) State law enforcement (state laws)
State Forest, Park or Game Lands	State Environmental Agency (administrative rules, state laws) Local law enforcement (state and local laws) State law enforcement (state laws)
State Highways	Local law enforcement, state law enforcement (state laws)
Local Roads and Highways	Local law enforcement (state and local laws)

Location of Offense	Possible Enforcement Officers (Types of Laws)
Private or Public Property in Municipality (or county where applicable county codes exist)	Local law enforcement (state and local ordinances) Code enforcement officers (local ordinances)
Private or Public Property in Unincorporated Area (where applicable county codes do not exist)	Local law enforcement (state laws)

There are many different individuals involved in the enforcement process. Their roles and responsibilities are described below.

Law and Code Enforcement Officers

Local Code Enforcement Officers – Local code enforcement officers typically enforce local ordinances that are often civil violations or ticketable offenses, and in some cases criminal violations. They serve as the first line of management in enforcing codes that uphold community standards, including property maintenance, fire, building, safety and health codes, including those that address litter and illegal dumping. Code enforcement officers should have a good understanding of criminal laws that they are not authorized to enforce, so they know when and who to call for assistance. Code enforcement officers often focus on educating citizens about what is required, and obtaining voluntary compliance and remediation. If voluntary compliance is not obtained, officers proceed with the enforcement process. This typically includes imposing a fine or other penalty, and may include an adjudication process, particularly if the accused violator denies culpability.

Local Law Enforcement Officers – Litter and illegal dumping violations are commonly enforced by local law enforcement officers. They are typically authorized to enforce both state and local laws, and they are



Photo 5: Hidalgo County, Texas

responsible for having a complete understanding of the laws, conducting a thorough investigation, including gathering and documenting evidence, and are generally required to appear in court if the case is adjudicated.

State Law Enforcement Officers – State law enforcement officers must know all state illegal dumping and litter laws, but typically would enforce the crime if they witnessed it directly, or if called in to assist on a case.

Agencies and Authorities – Federal, state and local agencies and authorities, such as park rangers and fish and wildlife officers, must also have a thorough understanding of the laws, their authority to enforce

them, and when they must call in a state or local law enforcement officer to enforce the law. State agencies are the only entities that are authorized to enforce state administrative rules. Often state environmental agency criminal investigation units also enforce state criminal laws. Federal agencies would become involved if the violation occurred on federal property, or violated a federal crime.

Other Stakeholders

Judges – Judges are responsible for interpreting the law, assessing evidence presented, and manage trials and hearings in their courtroom. In many criminal cases and most civil, the judge determines whether the accused is guilty. Judges also determine the penalty, within the confines of the law. Judges are responsible for keeping up with changing laws, understanding the importance of the laws, and understanding all of the facts associated with a case, including whether the accused has violated similar laws in the past. Judges are responsible for sentencing convicted offenders. In some court systems, such as in Shelby County, Tennessee, one or more judges might focus on environmental crimes.



Photo 6: Hillsborough County Code Enforcement Officer Bill Langford, Photo Courtesy of Keep Tampa Bay Beautiful

Prosecuting Attorneys – Prosecuting attorneys work with law enforcement to build a strong case to present to the judge and/or jury. Some locations, like El Paso County, Texas, have special prosecutors that focus on environmental crimes. It can be beneficial for prosecuting attorneys to work with law enforcement officers and/or organizations like KAB affiliates to ensure that the type of evidence being obtained (e.g., from camera surveillance) is effective in building a strong case that will lead to a conviction.

Witnesses – Witnesses are responsible for reporting a violation and providing as much information as possible to inform the investigating officer. In some cases the witness may have to testify in court.

Public – The public has a responsibility to have basic knowledge of illegal dumping and littering laws and to obey them. The public can also report littering and illegal dumping in many states, either through websites, smartphone apps, or telephone hotlines.

Public Officials – Public officials can strengthen anti-litter campaigns and garner support and respect for code and law enforcement officers by openly supporting the enforcement of litter-related crimes.

Choosing a Charge:

In some cases the law enforcement officer has some leeway in deciding which offense to charge the violator with. In making that decision the officer will consider:

- How egregious the violation is;
- Which charge is most likely to lead to swift remediation and, if necessary, adjudication;
- Whether the person is known to be a repeat offender;
- The quality of evidence/likelihood of conviction for the offenses;
- Expediency of follow-up; and
- Penalties for the violations being considered. Which penalties will be likely to result in remediation (cleanup, as appropriate) and deterrence from future violations, without placing undue strain on the offender or his family?

Violations that involve illegal disposal of hazardous or dangerous materials, large quantities of material, pollution to waterways, wetlands, or other environmentally sensitive areas, commercial violations, and repeat offenses are likely to be more egregious violations with more severe penalties.

4. When Laws Are Not Fully Enforced

Why are Litter-Related Laws Sometimes not Fully Enforced?

Many involved with law enforcement and combatting litter indicate that litter laws are not always enforced adequately. If litter-related laws are not adequately enforced, the authority of law enforcement is diminished. As a result, citizens' sense of community pride can also diminish. This may lead to less reporting of litter and illegal dumping, and may even lead to additional citizens adopting such behaviors. Some barriers to enforcement of litter-related laws are described below.

Resource Constraints

Public entities' budgets constantly face constraints and competing interests. Examples of resource constraints that might impact the proper enforcement of litter-related crime include:

- Inadequate number of officers to identify litter and illegal dumping cases or to follow up on those reported by citizens;
- Lack of funding to purchase surveillance cameras;



Photo 7: Seminole County Code Enforcement via Carroll McKenney Foundation

- Extreme backlog of court cases, leading to apathy among enforcement officers;
- Inadequate number of prosecuting attorneys, therefore litter-related crimes may not be given the attention they deserve; and
- Inadequate support for training officers and others about the importance of litter-related crimes and the charges that can result.

Lack of Information/Knowledge about the Crimes/Poor Perception

While some may fully understand the negative role litter and litter-related crimes can play in a community, others are either unaware of the impact these crimes can have on a neighborhood, or prefer the excitement of other types of crime. In some cases specific information may be lacking, which results in an individual being charged with a lesser offense than he should. Examples of information/perception barriers might include:

- Code and law enforcement officers may not perceive litter/illegal disposal to be a serious offense.
- Code enforcement officers may lack knowledge about more serious crimes that require the involvement of local or state law enforcement officers, and therefore do not take action.
- Law enforcement officers/code enforcement officers may not have full awareness of litter/illegal disposal-related laws and of their authority in enforcing these laws.
- Code and law enforcement officers may think that judges don't take the crimes seriously.
- Judges may lack understanding of the importance of environmental issues, and tend to be overly lenient with sentencing for such crimes.
- Prosecutors may not be knowledgeable about litter-related crimes (or may lack interest in them/do not perceive them to be important offenses) and fail to build an adequate case for a successful prosecution.
- History of an individual may not be known, and therefore enforcement officers, prosecutors, and/or judge

Officers on the Front Line

Code and law enforcement officers may be the first in the community to notice new issues that arise due to changing demographics and economic conditions, or in response to changes in programs and policies in the community.

Examples might include:

- Elderly homeowners that lack resources to clean/dispose of accumulated trash.
- A sudden accumulation of electronic scrap after the community's free electronics waste recycling program ends.
- Illegally disposed byproducts of meth labs being illegally disposed.
- An increase in hoarding behavior, which may be associated with mental illness.

Not only are enforcement officers educators, but they are also problem solvers. Solutions might go beyond enforcement, and may involve reaching out to other departments or agencies to establish new programs or identify resources for citizens. It can also be beneficial for code enforcement officers to complete and keep current on crisis intervention training to best assist the individuals they encounter.

are overly lenient with repeat offenders.

- Enforcement officers may be unaware of the type of evidence needed for a prosecutor to build a strong case.

Lack of Cooperation

Because proper enforcement of litter-related laws can involve the cooperation of many entities, there are situations in which lack of cooperation can also result in less-than-optimal enforcement. Examples might include:

- Code enforcement officers do not receive cooperation from local law enforcement because they see other laws are more important to enforce.
- Law enforcement officers and prosecutors do not talk about the evidence needed to build a strong case, resulting in few convictions.
- Code enforcement officers do not get along with local law enforcement, so fail to bring them on board for a state-crime violation at an illegal dumping site.

Lack of Political Will

There are several scenarios that can lead to a lack of political will to enforce a litter-related law. Examples include:

- An enforcement officer, judge or prosecuting attorney knows the violator either personally or professionally.
- A judge or prosecuting attorney may have political aspirations and does not want to risk backlash from the community.
- It may be known that there is a backlog of cases in the court system and enforcement officers do not want to add to the burden, or are receiving pressure to not add to the burden.

Weak Laws

In some jurisdictions littering and illegal dumping have relatively insignificant penalties, therefore people do not take the crime seriously. In some cases laws/ordinances may be unclear or conflict with each other. This can lead to hesitancy to prosecute.



Photo 8: Dayton Daily News

Strategies to Overcome Barriers

State agencies and local governments can work to overcome the barriers described above to enhance their ability to enforce and prosecute litter-related laws. Some such strategies are provided below.

Strengthen/Clarify Laws and Ordinances and Associated Penalties

Laws and ordinances can be strengthened and/or clarified to make them easier to understand, ensure they do not conflict with each other, and ensure that their penalties are adequate to deter the illegal behavior. The State of Texas, for example, strengthened their litter/illegal dumping laws about eight years ago such that they now include the potential for felony penalties. This is a strong deterrent, as littering convictions may result in a sentence of over a year in state prison. Similarly, some states have strengthened the penalties for repeat offenders and/or have adopted penalties that accrue on a daily basis (in some cases up to \$25,000 per day). This can result in swift compliance, as the offender attempts to avoid large fines. Allowing for more steep penalties for subsequent convictions may also provide an opportunity to focus on education (with some penalty) if a violation occurs, and may serve as a strong deterrent against future violations.



Photo 9: Sanford, Florida Community Improvement via Carol McKenney Foundation

Use Surveillance Cameras

Although not suitable in all situations, implementing surveillance camera programs can help catch offenders in the act. Keep Pennsylvania Beautiful and PalmettoPride are two KAB affiliates that have been successful at helping local governments and state parks install cameras to increase surveillance.

Implement Professional Education Programs

Most law enforcement officers and lawyers do not receive extensive education about environmental crimes. In some cases, code enforcement officers receive very little training at all. Providing in-depth education about the laws and ordinances that apply to litter and litter-related crimes, the potential penalties, and the authority of different entities to enforce the laws is critical. Such education should also include the importance of enforcing these laws, and tools and resources available for remediation and abatement. Crisis intervention training and knowledge about ancillary services are also important to providing citizens with the assistance they need. Regulators also need feedback about existing regulations and their efficacy.

- The Texas Illegal Dumping Resource Center provides training in person and online training classes in a variety of topics for a reasonable fee. Students earn continuing education units (CEUs) for completing the courses. The Center also provides/makes available other resources, including the

Texas Illegal Dumping Enforcement Guide and several field reference charts pertaining to specific crimes that officers can print and keep in their vehicles for easy reference.

- The County of El Paso, Texas has special environmental crimes prosecutors that conduct training of some sort on a monthly basis. The County educates other agencies and departments within the County, including some utility divisions, code enforcement officers (health and building inspectors), law enforcement officers and justice of the peace courts. They regularly instruct at the Sheriff's training academy.
- Many states require code enforcement officers to receive training, become certified, and receive a certain number of ongoing continuing education training hours per year. In some cases, however, training requirements are minimal and focus only on codes, not tangential violations, state laws, or crisis intervention training.
- The National District Attorneys Association (NDAA) offers training and resources (including online publications) for district attorneys, including papers regarding community prosecution.

Establish a Simple Penalty Option for First-Time Offenders

While some may see issuing tickets for littering/illegal dumping as an “easy way out” for offenders, having a simple, efficient penalty for non-egregious litter violations may encourage officers to cite violators. In Rhode Island, for example, a ticket for up to \$500 may be written for non-egregious litter violations. This option was not available per state law just a few years ago. This meant that all violators had to appear in District Court to face sentencing. This delayed the process and required the use of court and enforcement officer resources. Although it required a reduction in the maximum penalty, enforcement officers may now cite non-egregious violators, and only need to appear in traffic tribunal if the offender wishes to contest the ticket. For subsequent offenses or more egregious cases, the enforcement officer may charge the offender with more serious crimes.

Establish Citizen Reporting Tools

Many states and local governments have convenient ways that citizens can report illegal dumping or littering. In some cases the person reporting the incident does not need to provide their contact information. Reporting mechanisms may include online reporting forms, smart phone apps, telephone hotlines, or email. This information is particularly important for identifying, tracking, and cleaning up illegal dumps. Litterers that are observed are typically sent a form letter describing the observed incident and the penalties associated with littering, as well as the importance of not littering (see [Appendix A](#) for a sample litter



Photo 10: N.C. Department of Public Safety

observation notification letter). When citizens report illegal dumping and littering, they are sending a clear message that these issues matter to them. This may help bolster the importance of responding to such violations, and provides law enforcement officers information to help them follow up. In some cases a witness may be asked to sign an affidavit to be used as evidence (see [Appendix B](#) for a sample litter/illegal dumping affidavit).

Implement Community Improvement Programs

When a community is proud of its environment, it is more likely to protect and care for it. Keep Iowa Beautiful, through its Hometown Pride Program, implements community-level improvement projects. Local volunteers provide manpower and, in the process, develop a renewed sense of pride in their community.

Educate Businesses and Citizens about Litter and Associated Codes/Laws

Many citizens do not understand the importance of keeping a community litter free, nor the penalties that may be imposed if they violate such laws. They may also be unaware of the importance of covering loads and ensuring trash and recyclables cannot become windblown. Communities can provide citizens such information in an easy-to-understand, brief format. Examples include:



Photo 11: Nebraska Law Enforcement Training Center

- Washington State’s Department of Ecology developed PSAs to encourage citizens to properly secure loads and to not litter as well as a Fact Sheet about the importance of securing loads.
- [Keep North Carolina Beautiful](#) has many education and outreach programs and events, including an annual “tarp day” in which KNCB local affiliates work with local law enforcement to distribute free tarps and litter prevention brochures at landfills and recycling centers.
- [PalmettoPride](#) (S.C. KAB affiliate) has several school-based education programs geared for all ages, including coloring contests, puppet shows, and litter-free games.

Establish and Maintain a Database for Repeat Offenders

Graduated penalties for repeat offenses can be an effective tool. In order for the increased penalties to be an effective deterrent or penalty, however, the judge has to be aware that the offender has violated the litter/illegal dumping laws previously. Therefore, it is important to have a reliable, well-maintained database that provides this information.

Establish Beneficial Relationships

In some cases one agency may feel they lack resources to make an impact, but working together,

multiple agencies or jurisdictions may be able to share expertise and resources. There are many ways, from training and education to sharing expertise on a particular case that relationships between jurisdictions or agencies within a jurisdiction can help effect a positive outcome.

5. Investigating a Litter/Illegal Dumping Crime Scene

An investigation of a litter incident or illegal dump site may come about due to identification of a site directly, or via a citizen reporting littering or illegal dumping. While citizen reporting is helpful, it does not provide adequate information or evidence to forego an investigation. However, if a witness comes forward, consider having them provide an affidavit.

When investigating a litter or illegal dumping crime scene, safety is of paramount importance. The goal of investigating a litter or illegal dumping crime scene is to identify the offender and collect adequate evidence, if possible, to lead to a conviction or admission of guilt. If an individual can be identified through items found in the littered materials, such as mail, prescription bottles, retail receipts (many retail establishments can provide camera or video images associated with sales receipts), bills of lading or serial



Photo 12: Illegaldumpfreepa.org

numbers on goods, the investigating officer will usually try to identify and contact the individual and meet with them to discuss the situation. A discussion may lead to one of the following outcomes:

- Admission of guilt with the person willing/able to pay fine or clean up illegal dump;
- Admission of guilt with the person not willing/able to pay fine or clean up illegal dump;
- Description of how the litter or illegal dump (or their items) ended up on the site (i.e., explaining that someone else dumped the items, which may or may not be true); and
- Claim of knowing nothing about the situation (which may or may not be true).

A discussion, therefore, may end the investigation, or may indicate a need to continue with the investigation, if possible (and if likely to be fruitful).

Most litter offenders, if caught, are able to be caught due to the use of camera surveillance. Such surveillance is also helpful in catching and indicting illegal dumping offenders. Strong



Photo 13: Illegaldumpfreepa.org

photographic evidence includes:

- Clear images of the person committing the crime;
- Clear images of the vehicle committing the crime (including the vehicle's license plate);
- Before and after pictures of the site; and
- Pictures/video of the person in the middle of committing the violation.

Investigators can meet with prosecutors to ensure the type of images they are obtaining are adequate. Some KAB affiliates have camera loan programs (e.g., [Illegal Dump Free Pennsylvania](#) and [PalmettoPride](#)), and can provide instruction on how to install the cameras to obtain clear images. Cameras should be tested upon installation to ensure they result in clear images.

A checklist for investigating litter/illegal dumping crime scenes is provided in [Appendix C](#), and a crime scene investigation checklist is provided in [Appendix D](#). When investigating a litter/illegal dumping crime scene it is important to not jeopardize your safety or the safety of the general public. All potential illegal dumping crime scenes should be approached with caution, as any crime scene would be. Only properly trained enforcement officers should enter and investigate a site. When investigating a site:

- Wear proper safety equipment;
- Note any potential hazards at the site;
- Call for backup if needed;
- Take photos and note evidence and type of waste;
- Note proximity to streams, wetlands, or other environmentally sensitive areas; and
- Try to obtain site coordinates.



Photo 14: Detroit Free Press

Also, consider the following:^{1 2}

- Does the dumped material seem unusual? Does it appear to be from a commercial or residential source?
- Could the material include bodily fluids, medical waste, or illegal drug manufacturing byproducts?
- Does the material have an odor, burn your eyes, mouth, nose or skin? If so, leave the area and contact the local public health officials and the state's environmental protection agency. Seek medical attention if needed.
- Does the dumped material look particularly nasty or foul? For example, is there a strongly colored discharge, dead fish or animals in the area, or an area of dead grass? If so, this may constitute

¹ Michigan DEQ, "Michigan Environmental Crime Handbook for Law Enforcement Personnel," 2013.

² National Forensic Science Technology Center (NFSTC), "Crime Scene Investigation: A Guide for Law Enforcement," 2012.

violation of a state pollution and/or water pollution law, depending on the site location.

- Is there construction activity occurring at night? For example, consider the possibility of someone illegally filling wetlands.

Resources for Investigation:

The following resources for investigating a litter/illegal dump crime scene are available as appendices to this Guide:

- [Appendix C](#) – Checklist for investigating a litter crime scene
- [Appendix D](#) – Litter crime scene investigation form

Additional law enforcement resources are provided in [Appendix E](#).

Meth Lab Waste: It's a Hazard!

Methamphetamine (“meth”) producers may dispose of their labs, evidence, and byproducts by illegally dumping the material. The chemicals used to produce meth are extremely hazardous. Some are volatile and may ignite or explode if stored improperly. Exposure to the chemicals used can pose health risks such as shortness of breath, chest pain, dizziness, loss of coordination, burns to skin, eyes, mouth and nose, and even death.

Be sure to leave the area and notify the police if anything suspicious is found during an investigation or cleanup. Only professionals trained in removing hazardous chemicals should touch meth lab waste. Common materials are used in manufacturing meth, such as nail polish remover, alcohol, cold medicine, and more. Be on the lookout for propane tanks, tubing, duct-taped bottles or coolers, coffee filters stained with a reddish tint, a strong smell of ammonia or ether.

Source: Keep Pennsylvania Beautiful, “Meth Labs: A Recipe for Disaster.”

6. Penalties

In order for enforcement to be effective, penalties must be adequate. Ideally effective penalties not only help ensure the impacted site is remediated, as appropriate, but also deter future violations. Most law/code enforcement officers' primary concern with litter-related crime is to ensure that the litter or illegal dump is cleaned up, and to prevent future violations by making the person aware of the importance of not littering.

Minimum and maximum penalties are specified by the law, and state law typically defines the maximum penalties for certain categories of crime (e.g., misdemeanors and violations, for example). Penalties will differ depending upon the severity of the crime, whether the offender is a repeat offender, and may differ depending upon whether the crime is a civil or criminal offense. In addition to any of the penalties described below, the offender may also have to pay court fees.

Typically whether the crime is that of litter, illegal dumping, or some other crime is described in the law. In some cases the officer might have a choice as to which offense to charge – e.g., a violation of a state or local law.

Ticket – In some states littering is a “ticketable” offense, and the offender can agree to pay the fine via mail. If the offender desires, he may contest the charge in court; however this will require his time, possibly payment of a court fee, and requires the time of the officer and the resources of the court system.



Photo 15: The Sedona Eye

Fines – The potential for a fine is dependent upon the type and severity of the crime, and is typically determined by the judge, within the guidelines of the law. Some state laws specify how fines are to be distributed. In Connecticut, for example, half of the fine goes to the state, and half to the local government in which the violation occurred. Also, in Connecticut, a

surcharge of half of the fine amount is charged if the littering takes place on publicly owned lands.³ In some jurisdictions the minimum and/or maximum fines are greater if the offense is a commercial violation. In some jurisdictions a separate fine can be charged for each item illegally disposed. For egregious violations, in some cases a sizeable fine may be levied for each day the violation is in effect. This can be a significant motivator for the violator or property owner to remedy the situation as quickly as possible.

Probation – A person on probation must regularly meet with a probation officer and fulfill other terms and conditions, which might include serving community service hours or attending counseling. Probation is often coupled with a suspended sentence. If the person fails to maintain the conditions of probation, the judge may enact the original sentence or send the individual to jail.

Community Service – Many local governments believe having those convicted of littering or illegal dumping serve community service hours is a penalty fitting of the crime, particularly if they can help clean up the neighborhood they defaced. Some communities may sentence a violator to community service hours coupled with a fine and/or probation. An example of a community with such a program in place is Franklin County, Ohio. (See text box about environmental courts.) Some observe that community service hours are a more forceful deterrent than a fine, and some believe that the process of serving community service hours may drive home the importance of keeping a community litter/illegal dump free.

³ <https://www.cga.ct.gov/2008/rpt/2008-R-0314.htm>

Penalty Ranges – an Example

The seriousness of a violation and the type of offense committed determine the potential penalty for the violations. An example of potential penalties for Texas litter-related criminal violations is provided in the table below.

Less Serious	Type of Criminal Violation	Potential Penalty
	Class C Misdemeanor	Up to \$500
	Class B Misdemeanor	Up to 6 months in jail Fines up to \$2,000
	Class A Misdemeanor	Up to 1 year in jail Fines up to \$4,000
	Felony	> 1 year in state prison Fines \$10,000 or more
	More Serious	

In addition to criminal offenses, there are also the following types of offenses:

Code offenses – can result in penalties up to \$2,000 (in some states, can result in jail/prison time).

Civil offenses – can result in penalties only (not prison) of up to \$25,000 per day. Health nuisance violations (civil/criminal) are up to \$200 for first –time offense, up to \$1,000 for subsequent offenses.

Administrative Rule Violations – can result in administrative penalties of up to \$25,000 per day as well as civil penalties of up to \$25,000 per day, as well as revocation of any permits/licenses.

In some states there are also “ticketable” offenses (also called citations or violations), which are less serious than misdemeanors, and result in payment of a relatively small fine.

Sources:
 Texas Illegal Dumping Resource Center (www.tidrc.com)
 TCEQ Penalty Policy, April 1, 2014
http://www.tceq.state.tx.us/assets/public/comm_exec/pubs/rg/rg253/penaltypolicy2014.pdf

Incarceration – Although not a common penalty for litter-related crimes, incarceration is a possible penalty for a serious or repeat offense. In most states a jail sentence of less than a year may be a possible penalty for misdemeanors, and those convicted of felonies may be sentenced to state prison for a year or longer.

Public Notification – Keep Pennsylvania Beautiful issues a press release quarterly to local papers across the state to share the names of litterers and illegal dumpers. In addition, through their illegaldumpfreeepa.org program posts pictures of convicted illegal dumpers, courtesy of KPB’s surveillance cameras. Georgia’s state littering law also specifically allows for the publication of names of offenders in the local newspaper. El Paso County reports about illegal dumping violations online.⁴

Restitution – The court may mandate that the convicted offender repay cleanup costs and/or enforcement costs. Restitution may be in addition to other penalties.

Remediation – Courts or enforcement officers may require defendants to clean up the property. With illegal dumping, this is often the primary goal. Remediation may be used in combination with other penalties.

License/Permits Suspension or Revocation – In the case of administrative adjudication, in some cases (e.g., a waste management facility) the state environmental permitting agency may suspend or revoke a license if the facility has a litter/illegal dumping violation. This tends to be an effective penalty and deterrent because it can have an immediate significant financial impact on the offender. Another example is the suspension of a hunting or fishing license for someone that litters in a state forest, park, or environmental management area.



Photo 16: City of San Jose, CA

Community Service – Pros and Cons

Sentencing violators of environmental crimes to community service hours is beneficial in that it can serve as more of a deterrent than fines can. Also, the experience can provide the violator with an opportunity to see first-hand the issues that such crimes cause, and may even make the violator begin to feel a sense of community pride. On the other hand, managing community service projects and balancing projects with community service hours to be served takes a tremendous amount of administrative and supervisory time. It can also be difficult to obtain and maintain the appropriate balance between projects and hours to be served.

Vehicle

Forfeiture/Impoundment/Driver’s

License Suspension – In some cases the offender’s driving rights may be revoked for a period of time if he has had multiple offenses. In El Paso County, Texas, those found guilty of a third illegal dumping violation using a vehicle may have their vehicle impounded. In St. Tammany Parish, Louisiana, a third-time violator’s driver’s license is suspended for a year.

⁴ <http://www.epcounty.com/CS/tags/Illegal+dumping/default.aspx>

Other Tools

Other tools may be used to ensure the property is cleaned and the affected site is remediated. They include:

Injunction – An injunction is a writ or order requiring a person to refrain from a particular act, usually a civil offense. It may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge it may be enforced as an order of the court. An example would be in the case of a manufacturing facility that is operating in a manner that results in a significant litter issue. A judge could issue an injunction for the facility to stop operating, for example.



Photo 17: AutoCricket.com

Franklin County, Ohio – Stimmel Road Cleanup

In 2009 a C&D landfill began operating in Franklin County, Ohio. Before long, the owner, Richard Fintak, was operating the site as an illegal dump, reportedly earning nearly \$2 million over the course of a few months. During that timeframe Fintak had been warned by Ohio EPA and the Franklin County Health Department, Fintak did not cease operations. The Sheriff issued a warrant for his arrest in April 2010, but he fled to Indiana. Authorities found him and extradited him in July, 2011. In November of 2011 he pleaded guilty to one count each of open dumping, operating an illegal solid-waste facility and operating an illegal landfill or transfer station -- all of which are felonies. Fintak was sentenced to three years in prison and ordered to pay \$377,581 in restitution. The only stiffer penalty imposed in an environmental case was a six-year sentence given to a man in 2010 for transporting and dumping scrap tires throughout the county. The crime was solved with the hard work of the Solid Waste of Central Ohio's (SWACO) Environmental Crimes Task Force, a multi-agency effort.

Source: The Columbus Dispatch, April 7, 2012 and www.swaco.org

Lien – A lien is a qualified right of property that a creditor has in or over specific property of its debtor, as security for the debt or charge or for performance of some act. In every case in which property, either real or personal, is charged with the payment of a debt or duty, every such charge may be denominated a lien on the property. An example of the use of a lien is in the case of a private property owner that refuses to clean up the property, resulting in blight. A judge may order that the property be cleaned up and a lien be placed on the property to pay for the costs of the cleanup.



Photo 18: City of San Jose, CA

Enforcement of Litter and Illegal Dumping Laws in My Community

1) Think about litter and litter-related crimes in your community. Overall, do you feel that they are taken seriously by code/law enforcement officers, prosecutors, and judges? Yes No Why?

2) If these crimes are not taken seriously by one of these stakeholders, what do you think impacts their attitude about the seriousness of litter?

3) Do well-meaning code/law enforcement officers, prosecutors, and/or judges face other barriers in your community to enforcing litter-related crimes? If so, what are those barriers?

4) What could be done to improve the attitudes about the importance of enforcing litter or address the barriers identified? _____

5) What organizations or individuals might be able to assist with the possible actions described in #4?

Non-Enforcement Strategies to Prevent Litter/Illegal Dumping:

It is much more cost-effective, both in terms of cleanup costs and enforcement/adjudication costs, to prevent litter and illegal dumping in the first place. Some strategies to do so include:

- Education and outreach (how to manage trash, illegal nature of illegal dumping, importance of not littering)
- Signs (posted at hot spots, indicating illegal to dump, amount of fine, etc.)
- Lighting
- Adequate facilities and programs to manage trash and other materials
- Permit and manifest system for haulers (to encourage responsible management of collected materials)
- Physical barriers (fences, rails, berms, landscaping, trenches)
- Monitoring/surveillance cameras (signs indicating area under surveillance, “dummy cameras,” motion-activated beepers)

Franklin County, Ohio Environmental Court

Franklin County, Ohio, has an Environmental Court that has exclusive jurisdiction over criminal cases involving violations of the local housing, building, fire, zoning, health, waste collection, animal control, animal abuse, and pollution codes. The court also hears civil cases involving nuisance properties, local appeals, and landlord/tenant disputes. The Environmental Division in Franklin County, unlike many other Municipal Courts, is authorized to hear an expansive docket of cases; including felony criminal charges; administrative appeals and an unlimited monetary cap for its civil cases. The court, technically as separate division of the Municipal Court, has been in operation for nearly 25 years. The court's main goal is to protect and improve the community. In this court, if multiple violations (including non-environmental) are part of the charges, they are all heard in the environmental court.

In the latter part of 2014 the court began a pilot program Community Cleanup Crew, which has already gained national attention. Penalties for environmental crimes often involve 100 – 200 or more hours of community service. Court staff are coordinating neighborhood improvement projects in Franklin County, including the City of Columbus, and are overseeing these efforts. Typical projects include removing graffiti, cleaning up illegal dumps, and working with hoarders to make their homes habitable. In one case a professional painter that cleaned equipment down a storm drain was able to pay his debt to society by having his company paint the house of an elderly woman.

According to a County representative, the environmental court has several benefits over a traditional court, including:

- **Expediency** – the court tends to run more efficiently than municipal courts hearing a broad array of topics, therefore cases may progress more quickly. The expediency also provides for more reliable scheduling for citizens that want to be involved, making the court more transparent.
- **Transparency** – Not only does expediency help the public, but because court staff have involvement in the community (as described below), impacted neighbors are encouraged to write letters describing how environmental crimes have affected them.
- **Specialization** – Because the judge, Judge Daniel R. Hawkins, only hears cases in the Environmental Court, he has knowledge about the types of crimes being heard, and is familiar with repeat offenders. Although the current judge is serving his third year, the court baliff has been with the court since its inception, and can point out repeat offenders, such that a proper review of past offenses can be conducted. The judge also understands the impact such crimes can have on a community, and the importance of swiftly resolving issues and deterring future crimes. This has also helped the court earn the respect of local enforcement officers, who would prefer to see criminals serve community service hours than write a check. Officers are not hesitant to cite litterers or illegal dumpers, knowing the penalty will benefit the community and will likely have an impact on crime prevention.
- **Consistency and Creativity** – Because there is only one judge, he/she is able to ensure that penalties are relatively consistent. This helps foster a sense of credibility, and allows sentencing to reflect the court's primary focus – improving neighborhoods. The judge also has some leeway to use creativity in devising penalties. For example, one person dumped construction and demolition debris in a park in his own neighborhood. The judge ordered him to serve 100 hours of community service, and also serve as a park monitor for a full year.

The environmental court in Franklin County is the busiest court in the state, due to its exclusive nature. The court hears 800 to 1,000 cases each month. The Community Cleanup Crew pilot program resulted in 800 hours of community service hours improving communities in Franklin County in 2015. Court staff note that serving cleanup hours helps individuals understand the importance of taking care of the community and fosters an ongoing sense of community pride. In some cases individuals have sought additional opportunities to volunteer after they had served their required service hours. The Department hopes to expand the program in the future by partnering with other organizations, such as trade groups, to help individuals that serve community cleanup hours develop marketable skills. This may also include working with the public housing agency to ensure these individuals have housing until they become self sufficient.

Understanding Litter-Related Laws and Enforcement Responsibilities in Your Community

It is essential to ensure that all stakeholders in litter-related crime enforcement have a clear understanding of the litter-related laws and ordinances in your community, as well as the penalties, and who has the authority to enforce the laws. Creating a grid (like the one for Texas, shown below) can help all law enforcement officers, prosecutors, and judges, better understand laws, penalties, and enforcement authorities. Consider developing a similar matrix for your community. A more simplified option is presented as Table 2, below.

Texas Environmental Enforcement Options

	# Cases	Case Categories	Enforced By	Violations	Prosecutor	Courts
Major Civil Suit	Very Few	Major Civil Violations Penalties to \$25,000 per day; 1/2 of civil penalties stay local; use for large cases where cleanup is most important	Your city or county attorney files suit in District Court	Authority: TWC 7.351 THSC Chapter 361 THSC Chapter 382 TWC Chapter 26 Several other chapters and rules, permits, orders issued	Your County Attorney or City Attorney files suit; State included as necessary party; <u>specialized attorneys used</u>	District Court
Criminal	Few	Felonies > 1 year; \$10,000++	Your police department; county sheriff; constables; other local peace officers	TWC Chapter 7 THSC Chapter 365	District Attorney	District Court
	Some	Class A Misdemeanors To 1 year; to \$4,000		THSC Chapter 365 TWC Chapter 7 (few)	County Attorney	County Court at Law
	Many	Class B Misdemeanors To 6 mos; to \$2,000				
	Very Many	Class C Misdemeanors To \$500	State Environmental Crimes Units	Oil and Gas Waste TWC Chapter 29 NRC Sec. 91.002	Justice Court	
Health	Very Many	Public Health Nuisance and Public Nuisance Violations Civil/criminal to \$200 Subseq. to \$1,000 / Jail	Local Health Authority AND police department; county sheriff	THSC Chapter 341 THSC Chapter 343 Chap 341 Public Health Nuisance cases have two parts: 1. Court assesses a criminal penalty for the act; 2. Health Authority manages abatement THSC Sec. 341.012	County Attorney	Justice Court
Code	Rare	Code violation injunction	Your city	Local Government Code Sec 54.016	City Attorney	City Court
	Most of All	Municipal code violations To \$4,000 for dumping	Your city	Your municipal codes		
State Admin	Some	Administrative Rule Violations	TCEQ / Railroad Commission Administrative	State Rules, Permits, Orders	N/A	N/A

Source: Texas Illegal Dumping Resource Center (www.tidrc.com)

Photo 19: TIDRC

A simplified template for understanding and summarizing your community’s litter-related laws is provided below. There will likely be several “rows” associated with each type of violation.

Table 2: Template for Summarizing Litter-Related Laws

Type of Violation	Violation	Penalty Range	Enforced By	Attorney/Court
Civil				
Code				
Class C Misdemeanor				
Class B Misdemeanor				
Class A Misdemeanor				
Felony				
Administrative Rule Violations				

7. Court Systems

Law enforcement and code enforcement officers should also have a clear understanding of how the state’s court system works relative to potential litter-related violations. As described above, some lower courts in different states are specialty courts, including environmental courts. Two states, Vermont and Hawaii, have state environmental courts. However, most environmental courts in the U.S. are at the county, city, or district level.



Description of Environmental Courts

Environmental courts and tribunals (which are typically used to adjudicate administrative rule violations) are a type of specialized court system that adjudicates cases that have to do with violation of environmental laws only. Environmental courts and tribunals (as well as some other alternatives described below) have become more popular since 2004 in the U.S. and beyond, because of the

complexity of environmental laws and the focus that has been placed on environmental issues.⁵ Environmental courts not only aim to manage cases more efficiently, but they also provide alternative jurisprudence, as they typically aim to solve problems. Some environmental courts have relatively broad jurisdiction, covering a broad spectrum of violations, while others have a more narrowly defined scope.

No two environmental courts operate in exactly the same manner, and the types of laws/ordinances covered may vary among different “environmental courts” also. An environmental court could be held in

The U.S. Judicial System – Overview

Most cases are heard in state court systems (vs. federal), because most legal business (> 95%) is per state law. Although structures of court systems vary significantly by state, in general there are three “layers” in a state court system:

- 1) Trial courts – where cases start
- 2) Intermediate (appellate) courts – where a first appeal takes place
- 3) Supreme courts (courts of last resort) – which hear subsequent appeals and have the “last word.”

Within the trial court system there are often different courts, such as district courts (civil, based on different regions of state), circuit courts (for more egregious civil cases and criminal cases, and may also be by geographic district within the state). There may also be specialty courts, such as family courts (which again, may be by geographic district of state), environmental courts, tax courts, drug courts, real estate courts, worker’s compensation courts, etc.

Some states like Ohio, Rhode Island, Texas and Pennsylvania, have additional “layers” for lower courts. In Ohio, for example, there are Mayor’s courts which hear violations of local ordinances and state traffic laws, and above those are municipal and county courts, which hear misdemeanor offenses and civil actions of up to a certain \$ amount, and court of claims courts, which hear all suits against the state for certain types of violations such as personal injury, property damage, wrongful death, etc. In Rhode Island, below the trial court level is traffic tribunal, where all non-criminal matters about traffic cases are heard, as well as relatively small litter violations (ticketable offenses). It is important that stakeholders in your state have a clear understanding of the structure of the court system, and an understanding of which types of litter-related offenses can be heard in each court.

the same court building, but with a judge that specializes in environmental issues. Similarly, an environmental court could be held just one day per week, rather than being a full-time court. The extent to which the benefits and drawbacks described below pertain to the court are impacted, in part, by how the court is implemented. Herein, a court or division of a court that is operated by one or more judges dedicated to environmental issues and operates full-time is considered to be an environmental court, although the definition varies.

⁵ Information in this section is primarily drawn from: Pring, George (Rock) and Katherine (Kitty) Pring, “Greening Justice: Creating and Improving Environmental Courts and Tribunals.” for the Access Initiative, 2009.

Environmental courts are typically established in communities because the geographic area has experienced an escalation in environmental crimes/code enforcement violations. The courts focus on education, awareness, and remediation of such crimes.

Potential Benefits of Environmental Courts

The potential benefits of an environmental court/tribunal (ECT) include:

- The judge specializes in environmental issues, so becomes expert in knowing the laws and penalties associated with the laws. This leads to more consistent outcomes, which in turn enhances public perception of the court.
- The judge hears all environmental cases and therefore becomes knowledgeable about locations, laws and individuals that are problematic.
- Often experts are made available to the court, including environmental planners, etc.
- Because general courts often have delays, environmental cases can be delayed. By hearing all environmental cases in the environmental court, cases may be heard more expediently, leading to quicker convictions of more violators and lower costs to both the defendant and the court system. Establishing ECTs also frees criminal or general courts to concentrate on more serious (or other) offenses.
- ECTs can result in more visible and transparent adjudication, providing more confidence to the public in the process and greater compliance with existing laws.
- Costs can be reduced, particularly if cases are bogged down in the general court.
- Having ECTs can demonstrate a commitment to the environment.
- ECTs can hold environmental agencies more accountable, as they can also be adjudicated against in this forum.
- Cases can be prioritized if they have a higher importance. In general court, they are likely to be scheduled largely by the date they were filed.
- ECTs can result in more leeway to develop creative solutions focusing on remediating the issue rather than punishment.
- ECTs can make justice more accessible to some people by reducing formality and costs. This can result in increased public participation and environmental activism.



Photo 20: Mayra Beltran/Houston Chronicle

ENVIRONMENTAL COURT CITATION
METROPOLITAN GENERAL SESSIONS COURT

ORIGINAL

NO. ECC 03778

MONTH	DAY	YEAR	AM PM
TIME			
Last Name		First Name	
MI			
Address			
City		State	
Zp			
RACE	SEX	HEIGHT	WEIGHT
EYES	HAIR	DATE OF BIRTH	

Photo 21: Davidson County, TN

The Potential Drawbacks of an Environmental Court

The potential drawbacks of ECTs include:

- Specialist expertise is allocated specifically to environmental issues – some may believe other types of infractions are at least as deserving of such resources.
- Marginalization – trying environmental cases separately could result in an inferior court system. This could result, in part because some judges may perceive that their career options will be limited if they focus strictly on environmental issues.
- Fragmentation – particularly when one case involves multiple types of infractions, including non-environmental.
- Capture – special interests can more easily influence a smaller court system than a larger one.
- Establishing and maintaining a separate court system may be more costly overall, particularly if there is not a sufficient caseload.
- It may be challenging to decide what constitutes an “environmental” violation. Confusion – having two courts may be confusing to the public.
- Bias – prior experience or special interests of judges may bias decisions.

Other Options for Adjudicating Environmental Cases

An environmental court may not be the ideal system for adjudicating environmental crimes in all jurisdictions. Other options exist, which are described below.

A Special Judge or Judges

In some communities a specific judge (or judges) specializes in environmental cases within the existing structure of the court. This allows for the judge to develop some expertise in environmental crimes, and to gain knowledge regarding repeat offenses and trends in the district. The caseload would determine whether this is a part time or full-time position.

Specially Trained Prosecutor(s)

In some communities (like El Paso County, Texas – see text box and Columbus, Ohio) the District Attorney’s office has one or more prosecuting attorneys that specialize in environmental crimes. This allows the attorneys to develop expertise in the environmental crimes and build strong cases. The cases may be heard by general judges or by judges working in environmental courts.

Special Docket/Scheduling

In some jurisdictions caseloads for environmental crimes do not warrant (or are perceived as not warranting) focused resources, so the cases are scheduled together, such to expedite the cases and at least, for the scheduled time period, allow the judge to focus on environmental crimes. This may allow the judge to give the cases the attention they deserve and to hear them in the context of other environmental cases.

Citizen Board and/or Magistrate

Hillsborough County, Florida has an alternative adjudication system in place in which citizens with experience in code issues serve as volunteers on a seven-member board, or are one of three magistrates that hear code enforcement cases. If the case is heard by a magistrate, he or she alone is the sole decision making body. If heard by the Code Enforcement Board, a majority must make a decision by vote. The benefit of this system is that it saves in court costs, and cases are heard relatively quickly. The drawback to such a system is that it may be challenging for citizens to be completely objective in all cases.

Ombudsman

An ombudsman is an appointed individual that is charged with representing the rights of the public. Generally, an ombudsman will respond to complaints and inquiries from the public. At the state level, only Rhode Island is known to have an ombudsman (charged with managing complaints about RI DEM's performance) that handles environmental complaints. Large cities like Los Angeles and New York (as well as King County, Washington) have ombudsmen that look into complaints about city services, and try to identify and resolve systemic issues. An ombudsman would likely not have legislative standing, but could serve as a subject matter expert, advocate and liaison.

Enforcement Review	True	False
1) Litter and illegal dumping are always code enforcement violations.		
2) In some cases litter and illegal dumping can lead to incarceration.		
3) It is less costly to enforce litter/illegal dumping laws than to prevent litter and illegal dumping.		
4) Two benefits of environmental courts are: _____ and _____.		
5) One reason an environmental court may not be appropriate for a community is: _____.		
6) Usually a person can usually be arrested if someone reports that they observed them littering.	True	False
7) Examples of other agencies local law enforcement officers may need to work with to investigate and prosecute litter and illegal dumping crimes include: _____, _____, and _____.		
8) Potential hazards that might be encountered when investigating an illegal dump crime scene include: _____, _____ and _____.		

Factors to Weigh When Considering Court Structures

A separate environmental court (or division of a court) is clearly not appropriate for all districts. A district may not have adequate caseload, resources, expertise, or political will to establish a separate environmental court. If your community is considering establishing an environmental court system or other alternative adjudication system, consider the following:

- What types and levels of cases would be tried in the court?
- What geographic jurisdiction would be served?



Photo 22: www.gamefront.com

How many applicable cases are filed annually of these types and in this geographic jurisdiction?

- Is there currently judicial and/or prosecutorial expertise to implement an environmental court or other type of special alternative adjudication system? If not, could this expertise be obtained?
- Are there other environmental experts in the region that can provide expertise?
- Is the current court willing to relinquish some of its control?
- Are the citizens interested in an environmental court system, and/or are they interested in being informed about and participating in environmental cases?
- Would ordinances/laws need to be enacted to be revised or drafted and enacted in order for the court to be established?
- Is there a pool of active, engaged, and educated citizens that would be willing to serve on a board or magistrate on a volunteer basis?

Best Management Practices for Court Systems

Following are some best management practices for courts and alternative adjudication systems that handle environmental cases:

- Ensure the judge or presiding magistrate has developed some expertise on environmental issues and relevant laws.
- Have access to additional expertise as needed.
- Focus on remediation and education – take on the role of “problem solver.”
- Penalties should be steep enough to deter crime.
- Develop relationships with community members and various law enforcement stakeholders.
- Conduct business with transparency and welcome citizen participation, by providing information about court cases being heard as well as opportunity to provide impact statements, as applicable.
- Operate as efficiently as possible, minimizing delays and scheduling cases with forethought, so that similar cases can be heard on the same day, if possible.

- If possible, ensure the violator covers the cost of remediation/cleanup.
- Track the number of cases that go through the system by type.

Ensure that information about repeat offenders is provided systematically, so that penalties can be applied appropriately.



Photo 23: Judge Larry E. Potter

Alternative Dispute Resolution – A Good Option?

There is some controversy regarding the use of alternative dispute resolution (ADR), which includes but is not limited to arbitration, facilitation and negotiation, for environmental issues. While some believe ADR can enhance public participation and ensure that both sides are adequately heard, and reduce the burden on courts, others argue that, by definition, alternative dispute resolution results in a compromise, which may be a less just outcome. ADR should be considered on a case-by-case basis. Ultimately, if the offender is adequately deterred from violating in the future and the litter/illegal dump is remediated by the offender, then ADR may be an appropriate option, particularly if court resources are a limiting factor.

Shelby County/Memphis, Tennessee’s Environmental Court

Shelby County/Memphis Tennessee’s environmental court is one of the earliest and most successful environmental courts in the U.S. Judge Potter, who has presided over the court since its inception, has helped numerous other communities explore and/or implement environmental courts. The court opened initially in 1983 as a Division of the Memphis City Court, after initially focusing on environmental cases via a specialized docket. In 1991 the Shelby County Environmental Court opened as division of General Sessions Court, and City of Memphis ordinances by contract, making it the first countywide environmental court in the country. The court hears dozens of litter cases per month, and over 100 illegal dumping/improper storage cases per month. The court does a tremendous amount of education and outreach. They speak to neighborhood groups, conduct training seminars for attorneys and law enforcement, conduct outreach with the faith-based community and non-profit organizations to assist needy persons who end up in the court system, and plan for blight abatement with other interested groups. Judge Potter has been recognized with numerous awards, and is recognized as “the Father of Environmental Courts.”

Steps to Establish an Environmental Court

1) Research

- Identify local agencies that enforce codes of interest to an environmental court. Examples include building, fire, safety, public health, housing, solid waste authorities.
- Ask the agencies to provide information regarding the number of violations inspectors report on a weekly, monthly, or annual basis
- Contact local court (clerk of court or prosecutor's office) to identify number of cases heard annually – how many could be prosecuted by an environmental court
- Assess feasibility of establishing environmental court

2) Involve Stakeholders

- Write to all agencies, civic organizations, political leaders, council members, presiding judges, etc., to make them aware of the fact that an environmental court is being considered.
- Hold an informational meeting for all stakeholders and the public to explain the concept of environmental courts and gain consensus regarding the need for the court.
- Seek additional information such as KAB's Environmental Courts Video (Shelby County/Memphis TN Environmental Court) and by visiting other nearby environmental courts.
- Identify all agencies potentially involved and plan meeting with them.
- Identify potential judges to serve on the court.
- Assess costs of environmental court including staffing and other operational costs.
- Identify legislation and ordinances, if required, that must be passed.

3) Plan and Implement Systematically

- Identify all applicable ordinances to define jurisdiction of environmental court. Review to see if penalties/enforcement need revision.
- Determine if the ordinances require revisions to strengthen enforcement or penalties.
- Set court's guidelines.
- Determine the method for formal organization of the court and plan the steps for filing all necessary documentation.
- Meet with the potential judges to serve on the court.
- Determine budgetary considerations – including personnel and operating costs.
- Legislation and ordinances, if required to establish the court, must be drafted/ revised and passed by the governing body of the jurisdiction served by the court.
- Determine guidelines for sanctions.
- Establish a system for directing cases to the court.
- Hire court staff. Orient them to the new court, its operations and objectives.

4) Inform and Reinforce

- Hold a press conference to announce the formation of the court.
- Conduct a public awareness program to educate citizens about the court, emphasizing the goal of changing attitudes and behavior, versus focusing solely on levying penalties.
- Hold periodic meetings of the organizing group to gather and distribute information about the new court's activities.
- Encourage the court to conduct training sessions for agency inspectors on how to prepare stronger cases.

Source: Source: McCoy, Jamie L. and James W. Garthe, "Environmental Courts," Fact Sheet C25. Pennsylvania State University College of Agricultural Sciences Cooperative Extension. 1996.

Appendix A – Sample Litter Observation Notification Letter

Date: _____

Name: _____

Street: _____

City, State, Zip: _____

Vehicle Registration: _____

Date of Observance: _____

Road of Travel: _____

County: _____

Observed Activity: _____

Dear Motorist:

The information described above was recently reported to us on the _____ (jurisdiction) litter hotline (or other source) about your vehicle. We would like to take this opportunity to remind you that litter is a serious problem in _____ (jurisdiction – state, county or city, for example), and _____ (organization overseeing litter reporting program) needs your help to fight litter in _____ (jurisdiction). Through _____ (organization's) efforts to keep _____ (jurisdiction) beautiful and informed people like you, we can work to keep our state clean and attractive to visitors and residents.

Randomly discarded trash, even the smallest item such as a cigarette butt, endangers our environment, our wildlife and our economy. Our scenic beauty attracts tourists who put millions of dollars into our economy each year. We can't afford to have _____ (jurisdiction's) natural beauty spoiled by litter. As _____ (jurisdiction) residents, littering in our "own backyard" can decrease property values. Littering can result in costly fines for anti-litter law violators. In _____ fines can be as high as \$ _____ per occurrence or up to \$ _____ for a subsequent offense.

Please help prevent litter:

- Always dispose of your trash in proper receptacle;
- If you have children, teach them to do the same;
- Carry a litter bag in your car—and use it;
- Never throw anything out your window;
- Always clean up your site after a picnic or other activity;
- Cover trash receptacles tightly when you put them out for collection;
- Secure your load if you carry trash or loose material in a truck.

We're sure you'll agree that we can't allow litter to jeopardize property value, public health, tourism or the environment.

Please use the enclosed car litterbag to help keep _____ (jurisdiction) clean and beautiful.

Thank you,

_____ (organization)

Source: PENNDOT, <http://www.litterbutt.com/Stop-Litter-Campaign/PA-Sample-Litter-Letter.aspx>

Appendix B – Sample Affidavit

Litter/Illegal Dumping Affidavit

Date of Incident: _____ 20____ Time: _____ AM PM

Vehicle/Boat License Number: _____

State of Registration: _____ County of Registration (If Applicable): _____

Detailed Statement (Please provide a description of the litter/illegal dumping crime witnessed, providing as much detail as possible): _____

This statement was completed at _____ AM/PM on the _____ day of _____, 20____.

I have read the above/attached statement and I affirm to the truth and accuracy of the facts contained herein.

Printed Name

Printed Name of Witness

Signature/Date

Signature of Witness/Date

Printed Name of Witness

Signature of Witness/Date

Notary

Date

Appendix C – Checklist for Investigating a Litter Crime Scene

Field Supplies Needed:		
<input type="checkbox"/> Vehicle <input type="checkbox"/> Radio/Phone <input type="checkbox"/> Safety Vest <input type="checkbox"/> Footwear/Waders <input type="checkbox"/> Gloves <input type="checkbox"/> Long-Sleeved Shirt <input type="checkbox"/> Long-Legged Pants	<input type="checkbox"/> Dust Mask <input type="checkbox"/> Snake Chaps <input type="checkbox"/> Eye Protection <input type="checkbox"/> Bug Spray <input type="checkbox"/> Flashlight <input type="checkbox"/> Binoculars <input type="checkbox"/> Camera	<input type="checkbox"/> Measurement Tools <input type="checkbox"/> Evidence Bags <input type="checkbox"/> Pad and Pen/Reporting Forms <input type="checkbox"/> First Aid Kit <input type="checkbox"/> Hand Sanitizer <input type="checkbox"/> Water Bottle (Squirt Top)
Investigation Steps:		
<input type="checkbox"/> Park car safely <input type="checkbox"/> Don proper safety gear (boots, gloves, long-sleeved shirt, bug spray, eye protection, dust mask, safety vest) <input type="checkbox"/> Note potential safety hazards <input type="checkbox"/> Call for assistance if needed <input type="checkbox"/> Take photos <input type="checkbox"/> Note type(s) and amounts (weight and/or volume) of waste <input type="checkbox"/> Note any indications of individual or company responsible for crime, preserving crime scene – e.g., address labels, medicine bottles, sales receipts, bills of lading, etc. <input type="checkbox"/> Note proximity to stream, wetland, or other environmentally sensitive area <input type="checkbox"/> Try to obtain coordinates of site using GPS or GIS <input type="checkbox"/> Take your time and investigate thoroughly		

Field Supplies Needed:		
<input type="checkbox"/> Vehicle <input type="checkbox"/> Radio/Phone <input type="checkbox"/> Safety Vest <input type="checkbox"/> Footwear/Waders <input type="checkbox"/> Gloves <input type="checkbox"/> Long-Sleeved Shirt <input type="checkbox"/> Long-Legged Pants	<input type="checkbox"/> Dust Mask <input type="checkbox"/> Snake Chaps <input type="checkbox"/> Eye Protection <input type="checkbox"/> Bug Spray <input type="checkbox"/> Flashlight <input type="checkbox"/> Binoculars <input type="checkbox"/> Camera	<input type="checkbox"/> Measurement Tools <input type="checkbox"/> Evidence Bags <input type="checkbox"/> Pad and Pen/Reporting Forms <input type="checkbox"/> First Aid Kit <input type="checkbox"/> Hand Sanitizer <input type="checkbox"/> Water Bottle (Squirt Top)
Investigation Steps:		
<input type="checkbox"/> Park car safely <input type="checkbox"/> Don proper safety gear (boots, gloves, long-sleeved shirt, bug spray, eye protection, dust mask, safety vest) <input type="checkbox"/> Note potential safety hazards <input type="checkbox"/> Call for assistance if needed <input type="checkbox"/> Take photos <input type="checkbox"/> Note type(s) and amounts (weight and/or volume) of waste <input type="checkbox"/> Note any indications of individual or company responsible for crime, preserving crime scene – e.g., address labels, medicine bottles, sales receipts, bills of lading, etc. <input type="checkbox"/> Note proximity to stream, wetland, or other environmentally sensitive area <input type="checkbox"/> Try to obtain coordinates of site using GPS or GIS <input type="checkbox"/> Take your time and investigate thoroughly		

Source: Litter. It costs you.

Appendix D – Litter Crime Scene Investigation Form

Investigating Officer Name:	Date:
Time of Day:	Location (include coordinates, if possible):
Is location environmentally sensitive? (e.g., stream, wetlands, etc.?) YES NO UNKNOWN If Yes describe: _____ _____	
Description of illegally disposed waste: Type: <input type="checkbox"/> Household trash <input type="checkbox"/> Tires <input type="checkbox"/> Appliances <input type="checkbox"/> C&D debris <input type="checkbox"/> Vehicle <input type="checkbox"/> Chemicals <input type="checkbox"/> Other (Describe): _____ _____	
Amount: _____ Cubic Yards or _____ Pounds Was the amount measured or estimated (circle one) Is was hazardous or bio-hazardous? YES NO UNKNOWN Is evidence of violator at scene? YES NO UNKNOWN If YES, describe: _____ _____	
Is waste residentially or commercially generated? (circle one) RESIDENTIAL COMMERCIAL UNKNOWN	
Photo ID Numbers: _____	Evidence ID Numbers: _____

Investigating Officer Name:	Date:
Time of Day:	Location (include coordinates, if possible):
Is location environmentally sensitive? (e.g., stream, wetlands, etc.?) YES NO UNKNOWN If Yes describe: _____ _____	
Description of illegally disposed waste: Type: <input type="checkbox"/> Household trash <input type="checkbox"/> Tires <input type="checkbox"/> Appliances <input type="checkbox"/> C&D debris <input type="checkbox"/> Vehicle <input type="checkbox"/> Chemicals <input type="checkbox"/> Other (Describe): _____ _____	
Amount: _____ Cubic Yards or _____ Pounds Was the amount measured or estimated (circle one) Is was hazardous or bio-hazardous? YES NO UNKNOWN Is evidence of violator at scene? YES NO UNKNOWN If YES, describe: _____ _____	
Is waste residentially or commercially generated? (circle one) RESIDENTIAL COMMERCIAL UNKNOWN	
Photo ID Numbers: _____	Evidence ID Numbers: _____

Source: Litter. It costs you.

Appendix E – Law Enforcement Resources

[American Association of Code Enforcement](#) -- American Association of Code Enforcement (AACE) is a national nonprofit association representing the profession of code enforcement. Keep America Beautiful and AACE work together on code enforcement education and training as well as the development of Environmental Courts materials.

[Bureau of Justice Assistance](#) – Provides training, assistance, and funding opportunities for justice and law enforcement efforts (see Office of Community Oriented Policing Services).

[Environmental Law Institute](#) – ELI's mission is to foster innovative, just, and practical law and policy solutions to enable leaders across borders and sectors to make environmental, economic, and social progress. The Institute has experts in various topics, and offers an “ELI Bootcamp,” which is an intense environmental law training. ELI also houses the Center for State, Local and Regional Environmental Programs.

[International Association of Chiefs of Police](#) -- IACP addresses current issues confronting law enforcement through advocacy, programs and research, as well as training and other professional services. IACP supports the law enforcement leaders of today and develops the leaders of tomorrow.

[Keep America Beautiful](#) – Keep America Beautiful supports enforcement of litter and illegal dumping laws through educational resources, research, training, and grant programs.

[National District Attorneys Association](#) – The National District Attorneys Association provides various programs and training in special topics, including community prosecution. The association also provides technical assistance on cases for prosecutors and allied professionals.

[National Institute of Justice](#) – Provides resources, services and training for law enforcement and judicial personnel.

[Office of Community Oriented Policing Services](#) -- The component of the U.S. Department of Justice responsible for advancing the practice of community policing by the nation's state, local, territorial, and tribal law enforcement agencies through information and grant resources. The COPS Office awards grants to hire community policing professionals, develop and test innovative policing strategies, and provide training and technical assistance to community members, local government leaders, and all levels of law enforcement

[Regional Associations Information Network](#) – The Regional Associations Information Network (RAIN) is an online resource that provides member states and provinces with forums for the design and presentation of training, opportunities for professional networking and mechanisms for information sharing. The Regional Associations support integrated administrative, civil and criminal enforcement programs. Some areas of the site are password protected and require application approval. Specific regional resources include:

- [The Northeast Environmental Enforcement Project](#)
- [The Midwest Environmental Enforcement Association](#)
- [The Southern Environmental Enforcement Network](#)

Appendix E – Law Enforcement Resources

- [The Western States Project](#)

[Texas Illegal Dumping Resource Center](#) – The TIDRC provides training and in-depth information about illegal dumping laws in Texas. Training is also made available both online and in person to law enforcement officers and other interested parties. Although specific to Texas, the resource center may provide stakeholders in other states with ideas, solutions and tools that can be adapted to suit their state.

References and Resources

In developing this Guide, the project team drew heavily on work that had been done by KAB and KAB affiliates, and conducted many interviews with law enforcement officers, prosecutors, and others who work tirelessly in their communities to stop litter and illegal dumping, which are listed below. We are grateful for their insights and contributions to this Guide. KAB has conducted a literature review to identify more recent studies pertaining to litter and illegal dumping. Please see www.kab.org for more information.

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Keep Arizona Beautiful. Various online resources.

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Keep Iowa Beautiful, Hometown Pride Program. Various online resources.

<http://www.keeptowabeautiful.com/hometown-pride/index.htm>

Keep Pennsylvania Beautiful. Various online resources and information.

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[Ten Steps to Organizing an Illegal Dump Cleanup](#)

[Meth Labs: A Recipe for Disaster](#)

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