



A MESSY BUSINESS

Sewage spills are a crime – get familiar with the law in this break-down.

YOU ARE SITTING at your desk minding your own business. You see police lights outside your window. Police show up at your door. They tell you to get in their police car to go downtown. You are being arrested! “For what?” you ask.

Turns out the property had a sewage spill about a year ago. You cleaned it up, but that doesn't matter. Nobody seems to care. You are being charged with a felony!

You have a number of questions. Before you call your lawyer, you decide to read the ABODE magazine to find out what the law is. Here you go ...

Is it a crime when sewage spills at your property?

Yes. The Texas Water Code has two provisions that could apply.

Section 7.145 of the Texas Water Code provides, in part, that a person commits an offense if the person, acting *intentionally or knowingly* with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency.

Section 7.147 of the Texas Water Code provides, in part, that a person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with a valid or currently effective order issued or rule adopted by the appropriate regulatory agency.

What if I unknowingly discharge sewage?

These two offenses, while similar, have a very important distinction. The offense

under 7.145 requires the state to prove that the discharge was done intentionally and knowingly. This higher burden on the state carries with it a harsher penalty for the defendant. However, section 7.147 contains language allowing the state to prosecute an entity or person without alleging any culpable mental state.

What is the penalty for an unauthorized discharge of sewage?

It depends on whether the offense is committed intentionally or knowingly and whether the offender is an individual or an entity. If the offense is intentionally or knowingly committed and the offender is an individual, the punishment is a fine of \$1,000 to \$100,000 or confinement of up to five years in jail, or both. If the offender is not an individual, the punishment is a fine of \$1,000 to \$250,000.

If the offense is not committed intentionally or knowingly and the offender is an individual, the punishment is a fine of \$1,000 to \$50,000 or confinement of up to one year in jail, or both. If the offender is not an individual, the punishment is a fine of \$1,000 to \$100,000.

Repeat offenses with respect to either crime doubles the possible fine ranges with each day of a violation being a separate offense.

Is the crime a felony or misdemeanor?

If the crime is committed intentionally or knowingly, the crime can be charged as a felony. A crime that is not committed intentionally or knowingly can be charged as a misdemeanor.

What if I cleaned up the sewage as soon as I knew about the spill?

It may not matter. There are no defenses to

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these offenses and no allowance for mitigation after the fact. There is nothing in the law that creates a defense to prosecution when the actor takes corrective action after a spill. Generally, once sewage touches the ground, especially if it makes its way into a storm sewer, the sewage is considered in the water supply thus triggering the Texas Water Code provisions.

Like most criminal offenses, ignorance of the law is not a defense. The only limited defense to sewage waste violations is if the discharge was caused by an act of God, war, strike, riot or another catastrophe.

It may be important to note that conduct punishable as an offense under the Texas Water Code that is also punishable under another law may be prosecuted under either law. While these two sections are the most commonly filed with respect to sewage spills, a charge could be brought under any other appropriate law. For example, if a person is injured by a sewage spill by contracting a disease or some other injury, the state could arguably file a charge of “reckless aggravated assault” or some similar crime. Whether this could happen or not will depend upon the facts associated with each particular case. However, it is important that if a spill occurs, the spill must be cleaned up immediately in compliance with proper procedures and applicable law.

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The law is harsh when it comes to sewage spills. The best offense is a **good maintenance program** to avoid issues.

How long does the state have to pursue a violation of the law?

The statute of limitations for the felony offense is three years. The statute of limitations for a misdemeanor offense is two years. In other words, after a spill occurs, the state could pursue offenses for three years and two years, respectively.

What can I do to avoid a problem?

The easiest answer is to avoid sewage spills. This may be more difficult than it sounds since oftentimes sewage spills are out of your control. Apartment communities are active places. Residents seem to constantly put inappropriate items down sinks and toilets that can cause sewer problems. Residents cook with grease without appropriate grease traps which can lead to clogged pipes. Maintenance personnel try to unclog lines by taking off sewer caps without following proper procedures to avoid sewage spills.

Preventative maintenance is always a good idea. Although many of the problems that cause a sewage spill are outside of your control, there may be a few things you can do to minimize problems.

Be sure that sewage lines are well maintained and in good shape. If sewage lines need to be flushed, the appropriate permits should be obtained.

Be sure to regularly inspect sewer lines for cracks. Monitor water usage to better able detect leaks caused by cracks.

Adopt rules regulating what residents can put down the sink and the toilet. The TAA lease provides that trash must be disposed of at least weekly in appropriate receptacles in accordance with local ordinances. This requirement could be beefed up with community policies regarding the disposal of items in sinks and toilets.

The law is harsh when it comes to sewage spills. The best offense is a good maintenance program to avoid issues. If a sewage spill occurs, clean it up quickly and in accordance with applicable laws. Even though an offense may not be avoided, raw sewage flowing at your property will create a multitude of other issues ranging from resident dissatisfaction, odors or potentially health hazards.

If you ever find yourself in a position of being questioned by the authorities, treat the issue seriously and get the assistance of competent legal counsel. Since sewage spill offenses involve potential criminal prosecution, a criminal lawyer should be involved whenever dealing with the authorities. 🚫

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