



## Republic Sends Oprah's Lawyer After Texas Disposal Systems

by Joe Hyde

Sep 16, 2014

Now that Republic Services has an exclusive contract with the City of San Angelo, Republic is sending its lawyer, Charles "Chip" Babcock, after its competitor in the temporary roll-off trash business. Babcock is a Jackson-Walker LLP lawyer who famously and successfully defended Oprah Winfrey who was sued by Amarillo cattlemen for broadcasting a news story about Mad Cow Disease.



Texas Disposal Systems initiated collection of debris and trash at construction sites shortly after the City announced Republic was the winner of the trash collection request for proposals April 1.

The collection of waste from construction sites, or temporary trash, enjoys a loophole in Texas state law. TDS spokesman Ryan Beard argued back in April that State Law supersedes City ordinances that establish exclusivity in construction site trash collection, as expressed in the State Health and Safety Code, Section 364. TDS has generated a brisk business with local contractors since.

Babcock argues in a cease and desist letter sent to TDS CEO Bob Gregory that Republic's contract with the city affords his client an exclusivity and that TDS must cease and desist collecting construction debris inside San Angelo's city limits or he will be "initiating appropriate legal proceedings."

City Attorney Lysia H. Bowling told the Home Builders Association of San Angelo Executive Director Lynsey Flage at a July Council meeting that the City interprets the state law as not allowing TDS to collect construction site debris, and that the City will rely upon Republic to enforce it. Members of the HBA had lamented about the lack of competition and high rates charged by Republic and suggested that a free market is preferable.

Babcock, in his cease and desist letter to TDS, demanded that TDS cease transporting all trash inside the city limits. "Pursuant to that Agreement, Republic

Waste Services hereby demands that TDS immediately cease and desist all provision and solicitation of any services for the collection, hauling, and disposal of construction and demolition waste in the City of San Angelo," the letter reads.

Gregory responded, in a letter to Mayor Dwain Morrison and the Council, "This demand even extends to the transportation and disposal of this type waste collected outside the city limits, since the road accessing the landfill and the landfill is located within the San Angelo city limits. As you know, TDS has stated publicly its willingness to litigate to protect its right to collect, transport, recycle and/or dispose of such waste generated inside and outside the San Angelo city limits, and TDS will challenge both Republic and the City if they choose to so limit TDS and/or to litigate this issue."

### **The Plot Thickens**

On Tuesday's agenda, the City Council will decide whether or not to permit a much smaller trash collector, J-Bar Solutions. In the permit, the City states that J-Bar cannot conflict with the City's trash contract with Republic. However, the permit allows for J-Bar to transport trash through the city, and presumably, up the road to the entrance of the landfill that resides within the city limits.

### **Hidden Trash Tax**

Gregory also wants to know if "City staff negotiated final contract service rates to San Angelo customers higher than those originally proposed by Republic in its RFP responses," in his letter to the Mayor and Council. The City has released all documents except the original bid documents. TDS released its original bid and published it in \*pdf on its website. What's missing from public viewing is the original Republic Services bid documents.

Since neither the City nor Republic has not released them, there is no transparency on whether or not the City asked Republic to increase the originally bid rates to pay for the generous lump sums of cash the new contract provided to the City, Gregory said. TDS said that the Texas Attorney General rules Sept. 16 (today) on whether the City must release the Republic bid to the public. San Angelo resident Charles Young also made an open records request to view both bid documents. Young said that the City cancelled his request without asking him after the contract with Republic was approved July 1.

Through a separate open records request provided to LIVE! by TDS, there is a glimpse of originally bid rates versus the final contract rates. The contract rates are higher. In a table comparing them, Republic's contract fee for three-cubic-yard container pickup is 17- to 18-percent higher in the final contract rates than originally bid.

But a clearer picture of the differences between what the final negotiated rates are when compared to the original Republic bid can only be revealed if the City or Republic releases the original bid document.

The mayor has asked City staff to investigate the idea of using \$3.6 million of the Republic contract cash bonanza to shore up the troubled water enterprise fund. That could keep the

water rates lower. “[This] would mean that the City’s commercial businesses would be effectively subsidizing the below cost water use rates until a future date and perhaps to a future City Council decision on the matter,” Gregory said.

**Here is Gregory's entire letter to the Mayor and Council:**

*Subject: September 16, 2014 City Council Agenda Items 10 and 28*

*Mayor and Council Members,*

*This is a formal request that the City Council not use the recent \$3,600,000 payment from Republic Waste Services of Texas, Ltd (Republic) to the City of San Angelo for non-landfill projects. The \$3,600,000 was required by the 2014 Agreement for Landfill Lease and Operation and is described as a one-time royalty fee. It should be used by the City to cover the current unfunded portion of the City’s landfill Closure and Post-Closure Care liabilities and Corrective Action liabilities (landfill closure and post-closure care) until Republic contributes the full unfunded amount into the landfill trust fund.*

*As you may know, Texas Disposal Systems, Inc. (TDS) is awaiting the disclosure of several things before TDS presents its position to the San Angelo business community and formally requests that the City Council reconsider its approval of the two contracts awarded to Republic on July 1, 2014. Those things include, but are not limited to, 1) the two 2014 Republic Request for Proposal (RFP) responses, 2) the City staff’s official reaction to Republic’s apparent lawsuit response denying the responsibility to reimburse all San Angelo commercial solid waste service customers for all past unauthorized overcharges plus interest, and 3) the City staff and Council members response to Republic’s demand that TDS cease the collection, hauling and disposal of solid waste from construction projects located both outside and within the San Angelo city limits.*

*The 2014 solid waste services Republic RFP responses will be made available either from the City, following the Texas Attorney General’s ruling due September 16, 2014 on the City staff’s request to withhold them from TDS, or they will be made available from the discovery process in the ongoing litigation between Acme Iron and Metal, Mayfield Paper, and Republic. The Republic RFP responses will confirm whether or not the City Council awarded the solid waste collections service contract to the highest service rate proposer (rather than to the lowest cost provider, as reported by City staff and the RFP review committee), and whether the City Council and City staff negotiated final contract service rates to San Angelo customers higher than those originally proposed by Republic in its RFP responses. If so, TDS will request that the City Council reconsider its solid waste collection contracts executed with Republic in July and will ask the affected customers to join TDS in making this request to Council. If the City Council decides not to do so in a timely fashion, TDS will seek other avenues available under state law and City Charter to bring about a reconsideration of the Republic contracts. I am attaching documents received through open records requests, which suggest that the City allowed Republic to significantly raise its rates above its initially proposed service rates in the finally negotiated contract, and indicates that the TDS RFP response commercial rates were more favorable to San Angelo customers than Republic’s.*

*The September 16, 2014 City Council Agenda item number 28 says:*

*28. Discussion and possible action regarding the use of one-time Landfill Lease Revenue in the amount of \$3,600,000*

*The \$3,600,000 is required to be paid by Republic as a one-time royalty under the Agreement for Landfill Lease and Operation on page 26, Section 9.A.i.1. Republic must also pay into a Closure/Post-Closure Trust Fund \$4,735,000 under Section 9.A.i.2 on page 27 of the agreement. The new City contract with Republic does not require Republic to be responsible for any landfill closure and post-closure costs above its paid-in amount to cover such costs. The City remains liable for the closure and post-closure care of the City owned landfill including the current and future estimated corrective care costs that must be set aside as contamination is confirmed.*

*The City submitted a statement to the Texas Commission on Environmental Quality about September 12, 2013 that the then current Closure/Post-Closure/Corrective Action obligation was \$7,782,291 (copy attached). If you deduct the 2014 \$4,735,000 closure/post-closure payment from Republic the City is still short as follows:*

*City Reported and Accrued Liability September 2013 \$7,782,291*

*Payment from Republic for Closure/Post-Closure August 2014 \$4,735,000*

*Still Unfunded Closure/Post-Closure Care Liability \$3,047,291*

*The City should use the \$3,600,000 Republic payment to cover the \$3,047,291 unfunded liability until Republic puts up additional funds to fully cover this shortfall. Two of the problems with the current contracts is that Republic is not expressly obligated to pay this \$7,782,291 amount and Republic is a limited liability corporation, which limit the City's ability to rely upon the financial strength of the larger Republic Services, Inc. Per the City staff's presentation at the July 1, 2014 agenda, Republic will pay approximately \$184,000 per year in future years to cover the additional closure/post-closure costs accrued each year. The agreement does not state specifically how the City will recoup the \$3,047,291 unfunded liability, so it should dedicate the \$3,600,000 one-time royalty fee to this purpose. Also, given Republic's apparent refusal to accept its full closure and post-closure liability from approximately the past 30 years of operating the facility and hauling numerous other cities' waste into the City of San Angelo owned landfill, the City should rely upon the money it controls and that is dedicated to fund the landfill closure and post-closure liability. This would also allow the City to have some independence when the waste collection contract is renegotiated or rebid in the future.*

*Apparently, Republic very effectively used the City's lack of funds for landfill closure and post-closure care to pressure the City into considering only the Republic RFP response earlier this year. TDS respectfully submits that it would be highly inappropriate for the City Council to spend or allocate the funds received from Republic needed for future landfill closure and post closure expenses, if Republic is not around to pay for those expenses after the closure of the landfill, or if, in TDS' opinion, Republic once again fails to meet its contractual responsibilities to properly charge its customers and to cover landfill closure and post-closure costs. Surely the City*

*Council and City staff should know better than to put the City back into the position of dependency on Republic in the case that the contracts are terminated in the near future or are rebid in ten years, by spending the \$3.6 million on an unrelated project. It is much too soon to spend such funds, which this or the next City Council may be forced by San Angelo voters to give back to Republic, in the event of a contract termination. Furthermore, the documents and determinations TDS is awaiting could show that the significantly increased commercial solid waste collection rates may be the basis for the Republic upfront payments to the City, which would mean that the City's commercial businesses would be effectively subsidizing the below cost water use rates until a future date and perhaps to a future City Council decision on the matter.*

*TDS also formally requests that the City Council support an open and competitive market for the collection of solid waste from construction projects as allowed by state law, and not restrict solid waste hauler permits to only liquid waste haulers and haulers who only drive on city streets to access liquid waste disposal facilities and the City landfill, to transport waste collected outside the city limits. I am attaching the September 4, 2014 memo regarding tomorrow's Agenda Item Number 10, which was posted after close of business on Friday. I am also attaching a September 8, 2014 letter to TDS from Republic's attorney threatening litigation if TDS does not "cease and desist all provision and solicitation of any services for the collection, hauling, and disposal of construction and demolition waste in the City of San Angelo." This demand even extends to the transportation and disposal of this type waste collected outside the city limits, since the road accessing the landfill and the landfill is located within the San Angelo city limits. As you know, TDS has stated publicly its willingness to litigate to protect its right to collect, transport, recycle and/or dispose of such waste generated inside and outside the San Angelo city limits, and TDS will challenge both Republic and the City if they choose to so limit TDS and/or to litigate this issue. TDS supports open and competitive markets and will be watching with interest the level of support the City Council and City staff provides Republic in any attempt of Republic to create a monopoly in the collection, hauling, recycling and/or disposal of solid waste from construction projects inside or outside the city limits, as well as the City's support for Republic to not meet its public commitment to fully reimburse all commercial customers, plus interest, for all overcharges over the past fourteen or more years, and for the revelation of any final Republic solid waste collection rates higher than those proposed by Republic and TDS in their RFP responses.*

*If any of you have questions concerning the TDS position regarding tomorrow's agenda Items 10 and 28, please do not hesitate to contact me directly.*

*Sincerely,*

*Bob Gregory*

*President and CEO*