

No. B140226C

ACME IRON & METAL COMPANY, a d/b/a §
of TXALLOY, INC., and §
MAYFIELD PAPER COMPANY, INC., §
ON THEIR OWN BEHALF AND §
ON BEHALF OF THOSE §
SIMILARLY SITUATED, §
Plaintiffs, §

v. §

REPUBLIC WASTE SERVICES OF TEXAS, §
LTD., sometimes d/b/a §
TRASHAWAY SERVICES and §
DUNCAN DISPOSAL, §
Defendant. §

IN THE DISTRICT COURT OF

TOM GREEN COUNTY, TEXAS

119th JUDICIAL DISTRICT

**PLAINTIFF ACME IRON & METAL COMPANY'S FIRST REQUEST FOR
ADMISSIONS TO DEFENDANT REPUBLIC WASTE SERVICES OF TEXAS, LTD**

TO: Defendant, Republic Waste Services of Texas, Ltd., by and through its attorneys of record:
Don W. Griffis, Jackson Walker LLP, 301 W. Beauregard Ave., Suite 200, San Angelo, Texas 76902; and
Charles L. Babcock, Patrick R. Cowlshaw, John K. Edwards, and Edwin Buffmire, Jackson Walker LLP, 901 Main Street, Suite 6000, Dallas, Texas 75202.

Pursuant to Rule 198 of the Texas Rules of Civil Procedure, Plaintiff Acme Iron & Metal Company hereby serves its First Request for Admissions on Defendant Republic Waste Services of Texas, Ltd.

Dated: December 23, 2015.

Respectfully Submitted,

GRAVES DOUGHERTY HEARON & MOODY, P.C.
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By: /s/ James A. Hemphill

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that this document was served on counsel of record for Defendant via certified mail, return receipt requested, with courtesy copies transmitted via email, on this 23rd day of December, 2015 as follows:

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/s/ James A. Hemphill

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DEFINITIONS AND INSTRUCTIONS

1. The definitions and rules of construction set forth in the Texas Rules of Civil Procedure are incorporated herein by reference. In addition, as used in these requests, the following words have the following meaning:

- a) “You,” “your,” or “Republic” refers to Defendant Republic Waste Services of Texas, Ltd., and all of its attorneys, authorized agents, representatives or employees.
- b) “Plaintiffs” refers to Plaintiffs Acme Iron & Metal Company, a d/b/a of Txalloy, Inc. and Mayfield Paper Company, Inc.
- c) “Acme” refers to Plaintiff Acme Iron & Metal Company, a d/b/a of Txalloy, Inc.
- d) “Mayfield Paper” refers to Plaintiff Mayfield Paper Company, Inc.
- e) “Putative Class Members” refers to all commercial waste hauling and disposal customers of Republic in the City of San Angelo from January 1, 2000 to the present subject to the commercial service rates established by the City’s ordinance, including without limitation all customers using roll-off containers.
- f) “City” refers to the City of San Angelo, Texas.
- g) “Lawsuit” shall mean the above-captioned action.
- h) “Person” means the singular as well as the plural and the masculine as well as the feminine, and includes any natural person, corporation, partnership, association or other business or legal entity, and the officers, employees, agents, servants, attorneys or representatives of such entities, as the context requires.
- i) “Document” includes without limitation papers, books, accounts, drawings, graphs, charts, photographs, electronic, magnetic, or audio or videotape records or recordings, and any other data compilations from which information can be obtained and translated, if necessary, by you into reasonably usable form, and any other tangible thing meeting the definition of a “document” discoverable under the Federal Rules of Civil Procedure and case law interpreting those Rules.
- j) A document or communication “relating to,” “related to,” “relates to,” “evidencing” or “concerning” a given subject means any documents or communication that constitutes, contains, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, involves or is in any way pertinent to that subject, including without limitation, documents concerning the presentation of other documents.

- k) "Communication" shall mean and include every manner or means of disclosure, transfer, or exchange of words or information, whether orally or by document or whether face-to-face, by telephone, mail, e-mail, personal delivery, or otherwise.
- l) "Statement" means and includes any written statement signed or otherwise adopted or approved by the user in making it, and any stenographic, mechanical, electrical, or other recording or transcription thereof which is a substantially verbatim recital of an oral statement made by the person and contemporaneously recorded.
- m) "Fuel/Environmental Recovery Fees" means and includes fees charged to Putative Class Members by Republic since January 1, 2000 that were characterized as "Temporary Fuel Cost," "Fuel Cost," "Fuel Surcharge," "Fuel/Environmental Fee," "Fuel/Environmental Charge," "Environmental Recovery Fee," "Fuel Recovery Fee," "Fuel/Environmental Recovery Fee," or any other similar name, and also includes all fees referred to as "environmental recovery fees (ERF)" and "all fuel recovery fees, above the amounts expressly authorized by ordinance (FRF)," in the September 26, 2014 letter from Don W. Griffis to Ms. Lysia H. Bowling, City Attorney, City of San Angelo, a copy of which is attached hereto as Exhibit A.

2. Unless otherwise specified, the time period for these requests encompasses January 1, 2000 through the present.

REQUEST FOR ADMISSIONS

Request No. 1:

Admit that the number of Putative Class Members is so numerous that joinder of all members as parties is impracticable.

Response:

Request No. 2:

Admit that Plaintiffs' claims present questions of law or fact that are common to the Putative Class Members.

Response:

Request No. 3:

Admit that Plaintiffs' claims are typical of the claims of the Putative Class Members.

Response:

Request No. 4:

Admit that the Plaintiffs, if allowed to serve as representatives of the Putative Class Members, would fairly and adequately protect the interests of the Putative Class Members.

Response:

Request No. 5:

Admit that counsel for Plaintiffs, if allowed to proceed as class counsel under Tex. R. Civ. P. 42, would fairly and adequately represent the interests of the Putative Class Members.

Response:

Request No. 6:

Admit that with regard to the claims made by Plaintiffs, questions of law or fact common to the Putative Class Members predominate over any questions affecting only individual Putative Class Members.

Response:

Request No. 7:

Admit that a class action is superior to other available methods for the fair and efficient adjudication of the controversy presented in this Lawsuit.

Response:

Request No. 8:

Admit that you uniformly calculated and charged Fuel/Environmental Recovery Fees to each Putative Class Member during the period when you made such charges.

Response:

Request No. 9:

Admit that you represented to each Putative Class Member, during the period when you charged Fuel/Environmental Recovery Fees, that they were required to pay the Fuel/Environmental Recovery Fee reflected on each billing.

Response:

Request No. 10:

Admit that you uniformly charged Putative Class Members a franchise fee of 2 percent on all Fuel/Environmental Recovery Fees from 2000 through August 2004.

Response:

Request No. 11:

Admit that you uniformly charged Putative Class Members a franchise fee of 4 percent on all Fuel/Environmental Recovery Fees from August 2004 through 2014.

Response:

Request No. 12:

Admit that you represented to Putative Class Members, during the period when you charged Fuel/Environmental Recovery Fees, that they were required to pay the franchise fees referenced in the two preceding Requests.

Response:

Request No. 13:

Admit that you uniformly charged Putative Class Members a sales tax of 8.25 percent on all Fuel/Environmental Recovery Fees during the period when you charged such Fees.

Response:

Request No. 14:

Admit that you represented to Putative Class Members, during the period when you charged Fuel/Environmental Recovery Fees, that they were required to pay a sales tax of 8.25 percent on all Fuel/Environmental Recovery Fees.

Response:

Request No. 15:

Admit that you have charged Fuel/Environmental Recovery Fees to Putative Class Members that have not been refunded.

Response: