

# Construction waste puts San Angelo's trash contract back in spotlight

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(Photo: San Angelo Standard-Times)

The City of San Angelo's 10-year solid waste collection contract with Republic Services is in the public eye once more and stirring things up.

At issue is an on again, off again portion of the contract that deals with the collection of temporary roll-off solid waste from construction sites. The situation is likely to give the San Angelo building community whiplash and ulcers.

Republic and the city entered into an agreement titled "Special Exclusive Contract for Solid Waste Collection and Disposal Services," with an effective date of Aug. 1, 2014. According to court records, this contract gave Republic the exclusive right to collect, transport, and dispose of all residential and non-residential solid waste,

including temporary construction and demolition waste. The contract also contained a provision indicating that Republic, not the city, was responsible for enforcing its exclusivity in the event of legal proceedings.

Austin-based Texas Disposal Systems disagreed and began competing for solid waste at temporary construction projects, arguing that those terms were unenforceable because of a conflict with Section 364.034(h) of the Texas Health and Safety Code.

Bob Gregory, president and chief executive officer for TDS, told the Standard-Times in a 2014 interview on the issue: "Under state law, cities cannot include a monopoly control over construction roll-off containers. ... It's left open for competition. We've known this for a long time. We chose to begin offering this service once we realized Republic was overcharging commercial customers, including for roll-off."

Republic sent a cease-and-desist letter to TDS, then filed a lawsuit against the company in federal district court. In response, TDS filed a motion to dismiss.

In 2015, the district court dismissed the case with the reasoning "that the plain wording of Section 364.034(h) conveyed the legislature's 'clear intent to take away the City's inherent authority to grant exclusive (contract rights) in the specific instance of contracts to provide temporary solid waste disposal services to a construction project.'"

That decision, said City Operations Director Shane Kelton, rendered that particular portion of the city-Republic contract "null and void."

Two San Angelo men — Justin Jenkins, 32, and John Duke Hudson, 25, both with business degrees — who had started J-Bar Solution as a side gig in 2014 offering smaller sized 20 yard roll-off containers (7 feet wide and 12 feet long) to haul away temporary construction debris for projects outside the city limits — saw the decision as an opportunity for growth.

"The ruling (from Judge Sam Cummings at the federal district court) seemed pretty clear," Jenkins said.

They worked hard at contacting and cultivating customers, came up with prices that were affordable, but still helped them meet their financial needs, invested in more equipment and hired employees. J-Bar started with six dumpsters and now has 54 dumpsters in its San Angelo fleet. Jenkins quit his six-figure oilfield job and committed full-time to growing the business.

Both partners started planning for the future. They rebranded J-Bar as Southern Environmental and got their business certified by Texas Commission on Environmental Quality to handle Class 1 nonhazardous industrial waste as another level of specialization and service to offer their customers. The company's website proudly proclaims the motto: "Service You Deserve."

As expected, Republic appealed the decision. The U.S. 5th Circuit of Appeal judge reversed the federal court decision on Dec. 15, 2016. The court documents state: "The mere fact that the legislature has enacted a law addressing a subject does not mean the subject matter is entirely preempted."

It goes on to state: "We hold that the language in Section 364.034(h) fails to indicate with unmistakable clarity that the legislature intended to restrict a home-rule city's authority to enter into an exclusive contract for solid waste disposal services to a construction project. ... Accordingly, we hold that the district court erred in granting Texas Disposal's Rule 12(b)(6) motion to dismiss."

Kelton, with the city, said that latest decision means the portion of the contract that gives Republic exclusive rights to temporary roll-off trash collection within the city limits is back in effect. That makes recycling — the pick-up of recyclables from residential and commercial customers — the only open market option remaining in San Angelo.

The Standard-Times contacted Republic for this story and received this statement in response: "We are pleased with the court's ruling and look forward to the next phase of this case. We are truly proud to be embedded in the San Angelo community, and are deeply committed to making our customers' experience effortless."

After winning the reversal, Republic Services requested that Judge Cummings issue a summary judgment affirming Republic's exclusive rights in San Angelo. However, TDS sent out letter to its customers Jan. 11 informing them "Now that this Appellate Court ruling has been handed down, TDS is no longer able to serve your solid waste disposal needs inside the city limits of San Angelo."

Since TDS is no longer infringing on Republic's business, Judge Cummings denied Republic's request and set a date for a new hearing in July 2018. At that hearing, he will consider possible damages owed to Republic by the now-illegal competitors.

Jenkins, who was surprised by the reversal, said Republic Service contacted him Jan 9. and tried to keep it personal, giving him hope that something could be worked out between the two businesses. In the past, J-Bar has worked with both TDS and Republic on different projects.

"We are in a business where the big companies are big and the small companies are small and there's not too much in between," Jenkins said. "The big companies usually consume the small ones." At one point, Jenkins said a possible buyout was discussed and J-Bar sent Republic an inventory list. However, that option was apparently dropped.

Instead, Republic wanted an introduction to J-Bar's clients in the city to help with the transition. But it didn't seem like a viable option to Jenkins. "We know w (to face )them in court, they know we can't afford them in court," Jenkins said. So he and his partner are in the process of pulling about 40 dumpsters from different client sites around San Angelo. They had an opportunity to work on the proposed H-E-B going in southwest San Angelo but had to turn it down earlier this week, and that was hard, Jenkins said.

However, they will regroup and refocus their efforts on growing their clients outside the city limit. Jenkins said the company has customers within a 200-mile radius, including in Midland, Big Spring and as far south as Sonora and Fort Stockton.

"It's not like we have an option," said Hudson, partner in the J-Bar/Southern Environmental. "We have kids to feed."

"Local lenders we owe money to and good employees we want to keep," Jenkins added.

But Jenkins and Hudson are doing more than just focusing on business. Several of their clients, local builders and other small businesses from all over have contacted them asking about the situation and offering support, and the two partners want to build on that passionate response.

"This is not just about us," Jenkins said. "There's a trickle-down effect. It's affecting the the builders, the people they're building for, our employees and many others."

They both said they feel the need to create an awareness of the situation in the community. "We would rather be out providing service to our customers," Jenkins said. "But now that it (the situation) is here, we don't just want to give up. We want to do what we think is right."

He hopes to have a public meeting on the issue soon and take the matter to the San Angelo City Council to see if that portion of the contract can be amended. The council just last month voted to amend the contract to increase bulk pick-up and reduce recyclables pick-up for residential customers.

While the change is definitely having a financial impact on their company, Jenkins said when people ask him how they can help he tells them, "Contact your City Council member."

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