

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION

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. §

CIVIL ACTION NO.:  
6:14-CV-00045-C

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

**PLAINTIFFS' FIRST INTERROGATORIES**  
**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 33 of the Federal Rules of Civil Procedure, Plaintiffs hereby serve their First Request for Production on Defendant Republic Waste Services of Texas, Ltd.

Dated: November 24, 2014.

Respectfully Submitted,

GRAVES DOUGHERTY HEARON & MOODY, P.C.  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701  
(512) 480-5600 phone

By: /s/ James A. Hemphill

James A. Hemphill  
State Bar No. 00787674  
(512) 480-5762 direct phone  
(512) 536-9907 direct fax  
jhemphill@gdhm.com  
David A. King  
State Bar No. 24083310  
dking@gdhm.com

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 24th day of November as follows:

Don W. Griffis  
Jackson Walker L.L.P.  
301 West Beauregard Ave., Suite 200  
San Angelo, Texas 76903  
[dgriffis@jw.com](mailto:dgriffis@jw.com)

Charles L. Babcock  
Patrick R. Cowlshaw  
John K. Edwards  
Edwin Buffmire  
Jackson Walker L.L.P.  
901 Main Street, Suite 6000  
Dallas, Texas 75202  
[cbabcock@jw.com](mailto:cbabcock@jw.com)  
[pcowlshaw@jw.com](mailto:pcowlshaw@jw.com)  
[jedwards@jw.com](mailto:jedwards@jw.com)  
[ebuffmire@jw.com](mailto:ebuffmire@jw.com)

/s/ James A. Hemphill  
James A. Hemphill

## DEFINITIONS AND INSTRUCTIONS

1. The definitions and rules of construction set forth in the Federal Rules of Civil Procedure are incorporated herein by reference. In addition, as used in this notice, 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.

3. These requests for production specifically include production of electronically stored information ("ESI").

Production Format for Electronically Stored Information. Production of all ESI is requested in either original native file format or as searchable image files, using production numbering as described below. Before being produced, all parent-level email and loose-file (non-email) ESI should be de-duplicated across all custodians and shared network drives based on MD5 hash value. Individual email attachments should not be separately de-duplicated. All ESI should be produced with a metadata field listing all custodians where duplicate documents were found. In either native or image format, all ESI documents with any text content should be produced with full extracted text in a corresponding TXT file. For ESI production in image format, if any documents cannot reasonably be converted to readable images, the information should be produced in native format or some other reasonably usable format, and image production should include a placeholder image for each such unconverted or unreadable document setting forth the original filename and extension.

Production of Email. If produced in native format, email should be produced as individual, parent level, HTML files, and attachments to emails should sequentially follow their parent emails and be produced in native format as separate files. If produced in searchable image format, parent emails and their attachments should be produced as separate, contiguous documents. All email metadata should be processed in the Central

time zone, and all metadata fields for date sent, time sent, date received, and time received should be converted to the same time zone.

Production of Excel™ Spreadsheets. Excel™ spreadsheets should be produced in native format if stored in that manner, and each native file should be named with a document production number as described below. If a spreadsheet contains privileged information, You may produce it as imaged ESI, with the privileged information redacted, provided that You make reasonable efforts in applying page layout settings to maximize document readability. Images of spreadsheets that contain multiple worksheets should be produced with worksheet names indicated in a header or footer. To the extent that print-outs or images of all or part of a spreadsheet were also maintained in the ordinary course of business in static form (e.g., as a pdf attachment), those documents should be produced as images to the extent such production is not duplicative.

Production of Database Information. Relevant information from a database should be produced as a report or data table, either in a static image format or in a popular database application, such as an Access™ database.

Production of ESI Commentary and Tracked Changes. Microsoft Word, Microsoft Excel, and similar file formats that provide for comments or tracked changes should be produced in a manner in which all comments and tracked changes are preserved, accessible, and viewable in their original color format. Such production may be in native format.

Production of Paper Documents. Scanned paper document production must have natural, logical document breaks and should include, where available, copies of file folders, envelopes, or labels or other identifying marks on the containers in which the documents were maintained. All scanned paper documents should be produced with OCR text in a corresponding TXT file.

Image Production Format. Searchable images should be produced as separate documents in either single-page Group IV TIFF format or multi-page PDF format, at least 300 DPI resolution, with corresponding TXT files. Imaged ESI should maintain all color properties, and scanned paper images should provide color when content of the document contains more than one color.

Document Production Numbering. Each native or imaged file should be named with a unique production identification (UPI) number using a party-identifying prefix and sequential numeric value padded with leading zeroes to preserve uniform filename length. Each image page should be visibly endorsed with its UPI number. If a document is to be designated as “Confidential” or “Attorneys Eyes Only” a suffix “CONF” or “AEO” may be added to the filename and/or the image may be endorsed with an additional stamp indicating that designation. All corresponding TXT files, one per document, should use the same UPI number as its associated image (first page) or native file.

Load Files and Metadata. All native format and searchable image format production must include one or more CSV or Summation load files that associate each document and its UPI number with its corresponding TXT file, and that include the following original and processed metadata fields:

For all imaged documents (ESI and scanned):

BegDoc  
EndDoc  
ParentID  
Attachmt  
BegAttach  
EndAttach

For all ESI (native and imaged):

FileName  
Extension  
Author  
DateCreated  
TimeCreated  
DateLastMod  
TimeLastMod  
MD5Hash  
Custodian  
DupCustodians

For all email:

MailTo  
MailFrom  
CC  
BCC  
Subject  
DateSent  
TimeSent  
DateReceived  
TimeReceived  
TimeZone  
IntMsgID  
Conversation  
ConversationIndex  
ParentID  
Attachmt  
BegAttach  
EndAttach

4. If production in the requested form is not reasonably available or practical, office personnel at the undersigned law firm are available to discuss compatible alternatives.

5. A person is required to produce a document or tangible thing if it is within the person's possession, custody or control. Possession, custody or control includes constructive possession, such that the person need not have actual physical possession. As long as the person has the superior right to compel the production from a third party (including an agency, authority or representative), the person has possession, custody or control.



## INTERROGATORIES

### Interrogatory No. 1:

Please describe briefly the general methodology used by Republic in conducting the “review of billing data” referred to 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, including without limitation the general methodology for determining who was eligible for a refund, how the amount of refund was calculated, the role of the “leading international accounting firm” referenced in the letter, and any provisions for distribution of the refund.

### Response:

### Interrogatory No. 2:

Please describe briefly how the refund from Republic to Acme evidenced in the October 27, 2014 letter to “Valued Customer” from Ray Grothaus (a copy of which is attached hereto as Exhibit B hereto) was calculated, including without limitation identification of documents used in the calculation and documents generated in calculating the amount of refund.

### Response:



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

Don W. Griffis  
(325) 481-2566 (Direct Dial)  
(325) 481-2574 (Direct Fax)  
dgriffis@jw.com

September 26, 2014

*Via Hand Delivery*

Ms. Lysia H. Bowling  
City Attorney  
City Hall, Third Floor  
72 W. College Ave.  
San Angelo, Texas 76903

Re: Republic Waste Services of Texas, Ltd. Refund Review

Dear Ms. Bowling:

This letter provides an update regarding the review of San Angelo commercial billing statements that Republic Waste Services of Texas, Ltd. announced on June 27, 2014. Today we reconfirm that Republic will be refunding certain amounts charged to our commercial and industrial customers located in San Angelo going back to August 1, 2004. All the amounts to be refunded were charged in good faith. Nonetheless, Republic is voluntarily refunding these charges, with interest, to address any concern that amounts charged by Republic were incorrect or unauthorized.

The refund to be paid to San Angelo commercial and industrial customers consists of the following components: (1) all environmental recovery fees (ERF); (2) all fuel recovery fees, above the amounts expressly authorized by ordinance (FRF); and (3) all franchise fee and sales tax amounts that were added to bills on the basis of these ERF or FRF amounts. Although the applicable statutes of limitations would restrict legal claims to, at most, the last four years, Republic has elected to provide the refund for bills going back to August 1, 2004, which includes the full ten-year term of Republic's prior contract with the City. The refund also will include interest at the rate of 3.5%. The total amount subject to refund is in excess of \$6 million.

Republic's refund is based on a review of ten years of billing data for San Angelo commercial and industrial customers. We were assisted in this review by a leading international accounting firm. We have worked with the accountants to provide for refund calculations that are comprehensive and accurate. Republic takes responsibility for these calculations. We stand ready to make corrections or adjustments if warranted by additional information.

EXHIBIT A

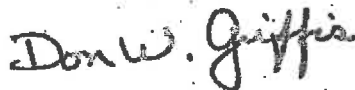
September 26, 2014  
Page 2

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Republic will begin mailing refund notices and checks to customers in October. Refund notices and checks will be mailed to current and last known customer addresses. We recognize that there will be challenges locating customers who may have moved from the area, gone through name changes, and for other reasons, and we will attempt to locate rightful recipients.

Republic looks forward to completing its refund program. We will keep the City informed of our progress. Republic is committed to making its new contract with the City a success for all our customers, for the City, and for Republic, and to continuing to provide all of its San Angelo customers with quality service and integrity at the highest level.

Sincerely,



Don W. Griffis



Republic Waste Services of Texas, Ltd.  
1422 Hughes Street  
San Angelo, Texas 76903

OCT 31 2014

October 27, 2014

Re: Refund of Fuel Recovery and Environmental Recovery Fees

Dear Valued Customer:

As promised in the press release that we issued this summer, enclosed is a check refunding certain fees that were previously charged to commercial and industrial customers. Your refund check includes the following components: (1) all environmental recovery fees that were billed to you ("ERF"); (2) all fuel recovery fees that were billed to you that were above the amounts expressly provided by ordinance ("FRF"); and (3) all franchise fee and sales tax amounts that were added to your bills on the basis of these ERF or FRF amounts. Your refund also includes interest at a rate of 3.5 percent.

We are voluntarily making refunds to affected San Angelo commercial and industrial customers, such as you. The refunds go back to August 1, 2004, covering the entire period of our prior contract with the City. We assure the community of San Angelo that the charges that we are refunding were billed openly and in good faith. It is our sincere hope that our decision to make these refunds will alleviate any concern regarding our past billings, evidence our company's willingness to do what is right for this community, and enable all to move forward.

Thank you for the honor of providing solid waste services to you and your business. If you believe you have received this letter and check in error, please contact us at 355-823-6901 or by email at [sanangelo\\_inquires@republicservices.com](mailto:sanangelo_inquires@republicservices.com).

Sincerely,

Ray Grothaus  
General Manager, San Angelo Division

11415949v.1

EXHIBIT B

REPUBLIC SERVICES, INC.  
 C/O Awin Mgmt Inc.  
 C/O Allied Waste Services  
 18500 N Allied Way  
 Phoenix AZ 85054

11007998  
 PAGE 1 OF 1  
 DATE 10/27/14  
 VENDOR ID 999175250



000 0001725 00000000 001 001 01725 000: 0 0

ACME IRON AND METAL  
 PO BOX 17126  
 AUSTIN TX 78760-7126

Date	Invoice Number	Reference	Gross Amount	Gross Adjustment	Description	Net Amount
10/26/14	ACCT# 3-0691-240351*NO FUEL/SRV NO REFUND		1,475.20	.00		1,475.20
			1,475.20	.00		1,475.20

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REPUBLIC SERVICES, INC.

C/O Awin Mgmt Inc  
 C/O Allied Waste Services  
 18500 N Allied Way  
 Phoenix AZ 85054

BANK OF AMERICA

CHECK NO. 11007998

53-153 ME  
 112

Date 10/27/14

Net Amount

PAY EXACTLY

ONE THOUSAND FOUR HUNDRED SEVENTY FIVE AND 20/100 DOLLARS

\*\*\*1,475.20

Void if over 180 days old

TO THE ORDER OF

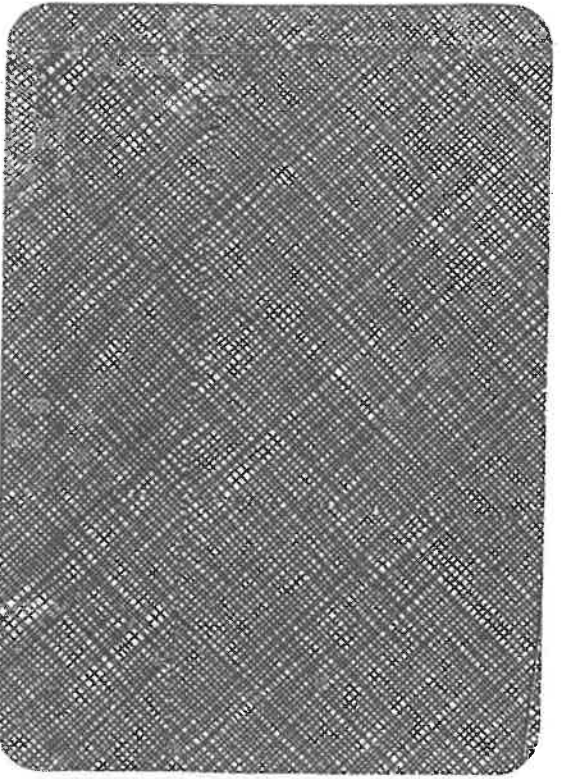
ACME IRON AND METAL  
 PO BOX 17126  
 AUSTIN TX 78760-7126

*Maura A. Lacy*  
 Authorized Signature

DOCUMENT CONTAINS A PAQUE WATERMARK. DO NOT CASH IF THE WATERMARK IS NOT VISIBLE. SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES.

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