



Internal Documents Reveal City's Lax Oversight of Republic Services

By Joe Hyde | Jan. 18, 2017 10:15 am

SAN ANGELO, TX – Despite previous claims, the City of San Angelo never officially audited the decades-long run of overcharges Republic Services was accused of making while in contract negotiations with the city in 2014. Through Republic's attorney, the city's trash contractor did admit that its "total amount subject to refund is in excess of \$6 million" to commercial entities Republic allegedly overcharged for 10 years. But the city cannot produce any documentation that proves city oversight that the refunds were made, not even to the city itself.



Republic Cash (Screen shot, Dolcefino Consulting investigative report video)

Though the city has no "official" audit, we reveal a draft audit no one at the city signed that admits the city knew Republic was overcharging its commercial customers. Internal documents and email exchanges reveal that the city knew well before the trash contract was in the news.

During the contentious 2014 fight over the City of San Angelo trash contract, the competitor who lost the bid charged in the cover letter to its RFP response, and in open session of the city council, that Republic Services, along with its gobbled-up predecessor entities Trash-Away and Duncan Disposal, had added unauthorized charges called "Environmental Recovery Fees" and fuel charges to commercial dumpster customer invoices for many years.

Watch: an investigative report on the City of San Angelo's failure to hold Republic accountable:

<http://sanangelolive.com/news/politics/2017-01-18/internal-documents-reveal-city%E2%80%99s-lax-oversight-republic-services>

Despite this, the city staff and council forged ahead with the largest monetary city contact this decade with Republic.

In an exclusive deal, the city awarded to Republic Services a contract to handle commercial and residential trash pickup as well as city landfill management in July 2014. Losing bidder Texas Disposal Systems estimated the value of the deal in excess of \$260 million over the 10-year duration. Citizens and commercial entities have no choice but to use Republic's trash service and pay pre-determined rates that are approved by city ordinance.

In absence of a free market, citizens and commercial entities inside the city limits must pay the rate Republic is charging under an umbrella of city protection. That means it is incumbent upon the city to monitor and approve Republic's rates and billing practices.

But the city did not stop, nor did it account for, alleged overcharging by Republic. This was learned in information from a document dump acquired from the City of San Angelo via the Freedom of Information Act.

On commercial trash invoices over the years prior to mid-2014, Republic's Fuel Charges/Environmental Recovery Fees were calculated based upon the gross billing of the commercial entity. Throughout 2014, we were asking where was the ordinance that approved these extra charges? The fees amounted to as much as 32 percent of the total trash pickup charges, [as alleged by Republic's rival Texas Disposal Systems](#).

According to City of San Angelo email communications retrieved through the FOIA request, a commercial customer was asking what the extra fees on their trash invoice were for as far back as 2011.

Kool Smiles, a dentists' office, on Sherwood Way contracted [National Waste Associates](#) to continuously audit trash fees at all of their corporate locations nationwide. Only one location, San Angelo's, had suspicious fuel charges on its trash invoice.

Kool Smiles' auditor, Brenda Chapman, asked Ricky Dickson at the city why these extra fuel charges were so high?

Dickson responded on July 28, 2011:

The rates for residential and commercial trash service for the citizens of San Angelo are established by ordinance. For residential customers there is fuel surcharge based on a three month average of fuel costs. The fuel surcharge for commercial customers is established in the ordinance and depends on size and type of container and the number of days a week that the containers are serviced.

But the keen auditor wanted more clarification. On Aug. 2, 2011, she wrote Dickson back for more information:

Mr Dickson,

Thank you for the information, I had reviewed the ordinance and that is what I thought. So if I had a 4 yard container that was serviced 1 time a week I should be charged only \$1.32 for fuel in total?

Duncan Disposal [Republic's now-acquired company] bills us a different amount each month and each month it goes up. Currently they are up to \$15.12, so my concern is that I am reading the wrong (possibly old) chart or not reading it the correct way.

I am also being charged \$3.04 when the chart says \$2.48 for the franchise fee

Thank you,

Brenda Chapman

After a few back-and-forth emails that pulled in Republic's AR Supervisor Jan Mulkey to the exchange, who argued to Chapman that the fuel charge fluctuates monthly, and sent her to Duncan.com (now a Republic-acquired company) to see how the charge is calculated, Chapman finally calls the ball in an email on Aug. 15. 2011.

Mr Dickson,

I am aware of Republic having a fuel surcharge that varies, this is their practice and one that we accept for open locations. However, this location is exclusive to them and regulated by the City, so what I am looking for is confirmation from the City that they have approved Republic to have a surcharge that varies, because that is not what your ordinance outlines.

Thank you,

Brenda Chapman

Dickson may have called Republic's AP manager, because this is his response later that day:

"After discussions with Trashaway [Republic] they told me they were going to drop the fuel surcharge on this account. If you still have questions contact Jan Mulkey at Trashaway."

Despite the warning that some customers were watching their trash invoices, Ricky Dickson from the city demurred to Republic and the two apparently collaborated to drop extra fees for one commercial customer who questioned her invoice.

The problem was solved. But was it?

Fast forward to 2014. On April 1 of that year, the city council voted 6-0 to select Republic Services as the winner of the Request for Proposal contest for the trash contract. But right after they voted, the head of the company losing the bid, Bob Gregory of Texas Disposal Systems, [announced in that council meeting](#) that Republic had been overcharging commercial customers for years.

"[The selection of Republic] fails to publicly answer questions TDS has asked about in our RFP response about fees Republic has been collecting from its customers for years, apparently without authorization, and overcharges to commercial accounts within the city beyond what is allowed," Gregory told the council.

What was the city staff doing about the alleged overcharges of the trash company its council had just unanimously handed a multi-million contract to?

Before and immediately after the selection of Republic, COSA Assistant Director of Operations Patrick Frerich and City Auditor Steven Mahaffey were attempting to decipher the "Fuel

Charges/Environmental Recovery Fee” line item on an example Republic commercial trash invoice.

On March 17, 2014, Frerich confirmed with Republic’s customer service rep Amber Timm that the invoice was calculated thus: “Base Rate x Fuel Recovery Fee x Environmental x Franchise Fee x Sales Tax = Total Charged to Customer.”

Days after Republic won the bid, on April 6, city auditor Mahaffey jumped in. He announced to Republic’s Brittney Reichenau via email that he was reviewing commercial invoices. “I am seeing a ‘Fuel/Environmental Recovery Fee.’ Can you explain what this is and how you get to the totals on this? Is there a percentage used for this?” Mahaffey asked Republic’s representative.

He wasn’t immediately answered. So, on April 6, Mahaffey emailed Republic’s Reichenau again, this time asking, “Do you have any documentation stating that the City authorized Republic Services to charge the Environmental Fee? I didn’t find anything on our end, but we have had turnover and it has been a while since the fee was implemented.”

Reichenau didn’t answer, according to the email string, until Mahaffey emailed her a third time on April 14. This time, Mahaffey wrote to Reichenau that City Operations Director Shane Kelton informed him that he should receive a response by the end of the day. It was 11:04 a.m.

At 4:47 p.m., Reichenau responded with:

Hi Steven,

Thank you for patience while we researched the background on the fuel/environmental fee. Since 2005 Republic has experienced turnover of personnel who could have more quickly explained the history of the fuel/environmental fee. Based on the available information, the fuel/environmental fee is indeed authorized.

By way of background, under the current contract with the City of San Angelo (“City”), Republic Services of Texas, Ltd. (“Republic”) provides among other things, collection and disposal services for commercial customers in San Angelo. Under the terms of the contract, the City receives 4% of both the basic rate and all fees permissible for such services from the commercial accounts.

The fuel/environmental fee was initiated in 2005 following the City’s adoption of a revised fee ordinance at the end of 2004. As to commercial customers, Section 11.405(c) of the 2004 ordinance provides that, “the charges for collection shall be a matter of contract between the customer and collector, based on the amount and frequency of collection”.

The fuel/environmental fee is not an excluded fee under 2.1.2 of our 2004 Agreement so is part of the aggregate revenue on which the City’s 4% franchise fee is paid. It is identified as such in the monthly report Republic provides to the City summarizing the 4% franchise fee revenues. Additionally, the identity and amount of the fee is plainly printed on each commercial invoice and billing statement.

Please let me know should you have any questions.

Thank you,

Brittany Reichenau

The next day, Mahaffey pressed Republic's Reichenau on the fee calculations. Using an invoice as an example, he asked her, "Can you help me understand how the calculations are adding up to \$13.96?" It was 9:07 a.m.

With no response, at 3:56 p.m., Mahaffey pressed Republic's Reichenau with a follow-up email. "I will need a response as soon as you can. Being that this was a question on the original request that was due back to us on Monday, I need to get the information to Management as soon as possible."

Republic responded the next day, mid-morning, with an Excel spreadsheet detailing the way the Fuel Charges/Environmental Recovery Fee was calculated at 11 percent of the invoice and fuel, plus the fuel surcharge for Mahaffey's example customer.

Mahaffey would play a key role in the city's audit of the Republic Services. According to Mahaffey during that timeframe, he was charged with determining if what Reichenau at Republic told her was true, that the city did authorize the Fuel Charges/Environmental Recovery Fees with an ordinance. His quest took him to YouTube.com to watch countless hours of city council meetings and to old minutes of council meetings held before the meetings were recorded on video.

[By June 15, the local paper reported that Mahaffey](#) was getting ready to give a "report of findings from his investigation" to the City's audit committee. Later, the findings would be briefed to the City Council in executive session.

Even Councilwoman Charlotte Farmer said, in a phone call with me in late June 2014, that she was briefed prior to the supposedly scheduled executive session on Mahaffey's findings. She stated that the alleged overcharges were only 11 percent, not 32 as we had reported TDS alleged.

The executive session never happened. The results of the audit were never briefed to anyone outside city staff, or maybe just to Mahaffey and Farmer. In the FOIA, we were presented with an unsigned, single sheet report of the audit with the word "DRAFT" imprinted on it. It was not signed. There was no supporting documentation attached.

The draft audit's conclusion ([download here in *pdf](#)) was that, "Republic had been overcharging commercial customers for many years. The total amount that had been overcharged is too great and spanned too many years to be determined."

In other words, Mahaffey could not find documents to back up Republic's earlier claim that the surcharges were authorized and possibly his bosses didn't care, because no one signed the audit.

Reporting the city's internal audit to council during executive session may have been dropped because, on June 27, 2014, [Republic issued a press release](#) announcing its "comprehensive review of commercial billing statements to identify any incorrect fees charged in the past for solid waste services."

Nothing from the FOIA, which asked for any and all documents and communication regarding the trash contract and the alleged overcharging, indicates the city, its staff, or council has any documentation of the results of Republic's audit.

Republic's attorney Don W. Griffis hand delivered a letter ([read here in *pdf](#)) to the city attorney Lysia Bowling on Sept. 26, 2014 announcing the audit declared on June 27 was complete. An unnamed "international accounting firm" conducted it, Griffis stated. In the letter, while not admitting guilt, Republic determined that it does owe over \$6 million in refunds to San Angelo's commercial trash customers.

City staff received a [spreadsheet from Republic indicating it was refunding commercial businesses \\$6,522,645](#). Republic did not state to whom the refunds would be issued or what amounts went to each customer. It only contained the aggregate amounts and calculations of the total of all refunds.

No one at the city asked for details, either. At least there was no documentation of the city's oversight of Republic's refund operation in the documents returned from the FOIA request.

Meanwhile the City of San Angelo, itself is a commercial trash customer of Republic's and, according to a city document in the FOIA, claimed it was entitled to \$92,003.90 in refunds from Republic for all of its dumpsters around the city. Of the \$92,003.90 owed, the city produced [only four checks totaling \\$17,751.14 in refunds](#), all dated March 2, 2015 with a polite form letter from Republic's area manager Ray Grothaus attached explaining why the check was enclosed.

City Public Information Officer Anthony Wilson said there could be other indicators detailing the city's oversight of the Republic refunds. For instance, the balance of the \$92,003.90 was wire transferred, or maybe city staff didn't photocopy all of the checks. The point is, if the city can't produce documentation of its oversight of the Republic's alleged overcharges and refunds, not even to itself, what is it doing for its citizens?

Docefino Consulting, an [independent private investigations consulting firm](#) based in Houston, Texas made the FOIA request for this report.