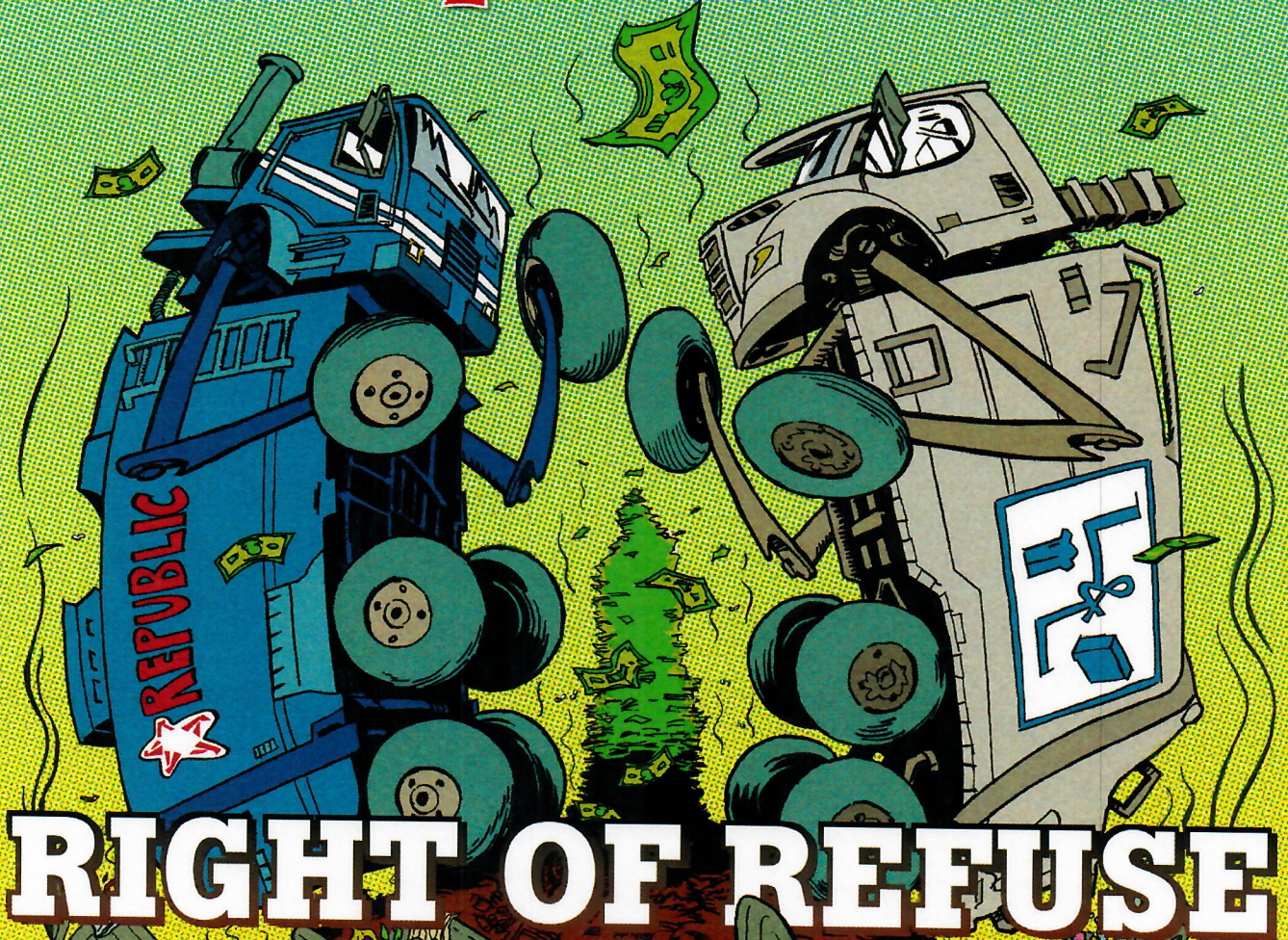


DAN BROOKS: IT'S BICYCLE SEASON. TIME TO DIE. | AN EXODUS AT THE BOOK EXCHANGE OVER HARASSMENT COMPLAINTS

# MISSOULA *Independent*

Vol. 29, No. 24 • June 14–June 21, 2018

Western Montana's Weekly Journal of People, Politics and Culture



## RIGHT OF REFUSE

A Bozeman businessman is trying to bust Republic Services' Missoula trash monopoly. It might get messy.

by Derek Brouwer



**I**t reads almost like *City of Missoula v. Mountain Water*: A corporate goliath with an iron grip on an essential Missoula service. Annual profits that could plug the University of Montana's budget shortfall and still leave millions for shareholders. Former U.S. attorney Bill Mercer, who represented the Carlyle Group, defending the corporate monopoly, circling witnesses like a shark. And a sympathetic underdog who is undeterred and eager to fight.

But the fight playing out now in Missoula isn't over a precious, life-giving resource. It's over trash — the roughly 180,000 tons of it the city and county dump into the local landfill every year.

Republic Services, a publicly traded company that operates in 40 states, handles the largest portion of Montanans' trash. The company's slogan, "We'll handle it from here," takes on particular meaning in Missoula County, where Republic owns every stage of the disposal process, from collecting garbage in the alley to storing it at the company's regional landfill on the Northside. In no other urban area of Montana does a company enjoy this sort of monopoly, a circumstance born from state law, industry trends and city-county history. Your trash cannot legally escape Republic's hands, and your government has no say over how much Republic charges you to handle it.

Missoulians will win if the state lets him compete (and forces Republic to start competing) for our business.

If he succeeds, Johnson's "unprecedented" campaign — that's Republic's word for it — could upend the garbage industry in Missoula and statewide. The choice probably sounds simple. What could competition bring to Missoula besides better, cheaper service?

Republic says it might just turn the whole system into a dumpster fire.

### 'Doesn't smell right'

Johnson says he knew very little about the garbage industry when he decided to start hauling trash in 2006. Then

The five-member Public Service Commission acts as the gatekeeper for garbage haulers in any Montana market, a function intended to keep streets safe and lend stability to an industry that requires operators to make big investments in equipment. About 45 active private Montana carriers have received "certificates of public convenience and necessity" issued by the PSC to haul trash in various parts of the state, according to PSC data. Hauling companies reported about \$122 million in revenue in 2016, the *Indy's* tally of annual reports filed with the PSC found, of which \$44.6 million was attributable to Republic Services' collection operations. Another \$12.6 million landed in Republic's cof-

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photo courtesy L&L Site Services

**Lance Johnson started his Belgrade-based construction-debris collection company, L&L Site Services, in 2007. After winning the right to haul residential and commercial trash in Gallatin County in 2016, he wants to expand into Missoula County.**

Waste management, like clean water, seems destined to become one of the defining global environmental crises of the young century, yet industrialized systems have a way of putting our garbage out of sight and mind.

Unlike drinking water, where publicly owned utilities serve nearly 90 percent of people with piped water, waste management in the United States is a booming \$70 billion industry. Municipally managed trash collection and disposal operations accounted for only 20 percent of industry revenue in 2016, according to figures published by the *Waste Business Journal*.

Parallels between Missoula's new garbage war and the protracted Mountain Water fight go only so far. For one thing, the city of Missoula wants nothing to do with it. And the David taking on Republic's Goliath doesn't have nearly the resources the city brought to bear in wresting control of the water system from corporate control. He's a slight Bozeman man, a Navy engineman turned garbageman named Lance Johnson. Where the water war was won with an argument for public stewardship of public resources, Johnson isn't trying to return trash cans to the people. He just wants some of them for himself, and he thinks

in his late 20s, Johnson had just graduated with a mechanical engineering degree from Montana State University, which he paid for by joining the Navy.

While working as a mechanic at Montana Kubota in Bozeman, Johnson heard contractors complain about the difficulty of getting debris hauled away from work sites. He and a co-worker saw a business opportunity. They created L&L Site Services to offer same-day hauling of the construction debris being generated by Gallatin Valley's pre-recession building boom.

They had no idea they'd need permission from the state to start driving their trucks, Johnson says.

fers from other sources, primarily its Missoula landfill. (The state's next-largest waste management company, Montana Waste Systems in Great Falls, reported \$7.4 million in combined revenue.)

L&L obtained a limited certificate in 2007 to haul construction waste in Gallatin County and around Big Sky, but Johnson soon began eyeing residential and commercial collection as a larger, more stable business. To make inroads in those sectors, Johnson would have to go back to the PSC to prove that 1) his company was fit to do the work, 2) there was a need for services that existing carriers couldn't or wouldn't meet, and 3) his busi-



ness wouldn't hurt existing carriers in a manner "contrary to the public interest."

Others had succeeded before. In a key case in the 1990s, the PSC allowed a new hauler into the Bozeman market after hearing testimony from 40 witnesses who outlined then-extant hauler Three Rivers Disposal's pattern of unreliable service and poor customer service, including instances in which Three Rivers told complainants that if they were unhappy with their service, they were free to haul their garbage to the landfill themselves.

Johnson couldn't muster testimony showing that the current haulers — the city of Bozeman and Republic Services — weren't up to snuff, and in 2011 his ap-

customers, thanks, he says, to L&L's small-business style and emphasis on customer service.

"Even though they're lowballing me, my honest, good rate — the more [customers] hear about it, the more they support me," Johnson says. "It's the service level [Republic] can't compete with."

Perhaps his biggest coup was the contract for Belgrade School District. In 2016, L&L put in a bid similar to what Republic had been charging the district, but Republic undercut the bid by half. District officials, suspicious that Republic was trying to "buy" the contract, chose L&L despite the higher price, saying Republic's bid "just doesn't smell right," the *Belgrade News* reported.

porate company that's running it maybe for the wrong reasons," Johnson says. "It's for the money. ... [Republic has] to answer to stockholders. [They] have to prove to them that [Republic is] making money. If it's driven by money, customers aren't taken care of the way they should be."

### 'Garbage wars'

Missoula's garbagemen shouted at city commissioners as the commissioners prepared to vote. "You want to kick us out into the street," one said, as quoted in the *Daily Missoulian* in 1957. "We are being dealt a very bad injustice," another yelled.

The commissioners didn't care. They wanted "all the people in Missoula to be

requiring that residential garbage be removed by a licensed hauler, *Missoulian* articles from the time indicate. Small licensed haulers divvied up the city into districts so no one would be subject to the "competition and chance" that could threaten their success. In 1957, with the city seemingly "led around by the nose of eight or ten garbagemen" (as one resident had warned), the city commission decided to issue an exclusive citywide contract by bid and selected a bidder who wasn't part of the MGHA.

The problem was that the winning bidder didn't yet have a state permit from the Public Service Commission (then the Montana Railroad Commission), which subsequently sided with the MGHA

## A Bozeman businessman is trying to bust Republic Services' Missoula trash monopoly. It might get messy.



**Republic Services, a publicly traded company with operations in 40 states, is the largest garbage company in Montana. The company has a monopoly over garbage collection and disposal in Missoula County.**

plication was rejected. He returned to the PSC again in 2015, this time armed with testimony from a disgruntled Republic Services driver who told commissioners that his own company was providing substandard service and unsafe working conditions. L&L got its certificate.

Republic, Johnson says, did what it could to ensure its newfound competition got a chilly reception. The company approached large customers with discounts and contract offers in what Johnson considered an attempt to lock up the market before L&L's trucks hit the road

Emboldened, Johnson is looking across the Continental Divide to Missoula, where the opportunity to expand seems even greater — if he can convince the state to crack Republic's monopoly. In Gallatin County, Republic already faced competition from the county-run service and hauled its trash to a county-owned dump, for which Republic pays tipping fees. None of those "checks and balances," as Johnson calls them, exist in Missoula County. Even if he wins the right to haul trash here, he'd have no choice but to take it to Republic's dump and pay Republic for the privilege.

"What I've seen over here, I see over

served," and if that meant angering the handful of garbage haulers who'd formed a virtual monopoly in the city, so be it. "We want to find out once and for all if we are getting our money's worth," said then-mayor James A. Hart.

You have to go back decades to find a time when Missoula's garbage service wasn't a monopoly. Ironically, Mayor Hart's stand against the so-called Missoula Garbage Haulers Association would end up setting the stage for the power Republic enjoys here today.

Citing trash in the streets and the intent to start a city-owned landfill, the city

haulers, ruling that "carriers who are providing the public with satisfactory and adequate service should be protected against undesirable or unnecessary competition." Commissioners refused to issue a new permit, allowing Missoula's garbagemen to consolidate their power into a new conglomerate called City Disposal. City Disposal opened its own private dump, and the city dump closed.

The city's garbagemen were still prone to drama and infighting, but industry economics had a way of bringing them back together. "Two Survivors Remain After Missoula's 'Garbage Wars'" read a



# "Your trash cannot legally escape Republic's hands, and your government has no say over how much Republic charges you to handle it."

story was accompanied by a cartoon depiction of an anthropomorphized garbage truck with its jaws spread wide. A few years later, City Disposal gobbled up the last straggling competitor, and then it was gobbled up in 1979 by a national corporation, Browning-Ferris Industries, according to Max Bauer, Jr., City Disposal's former general manager. BFI was later acquired by Allied Waste, and Allied was acquired by Republic in 2008 for \$6.24 billion.

As if to underscore the lineage, Bauer, whose family started two of Missoula's early hauling operations and opened the landfill, retired as Republic's Montana general manager several years ago.

As time went on, however, Montana

lawmakers grew uncomfortable with the law that protected entrenched garbage-industry interests statewide. Unlike other utility rates — say, water or electricity — garbage-collection rates are not set or monitored by the state. In 1983, research presented to lawmakers showed that Montana was the only state to act as a garbage-biz gatekeeper without also regulating rates. Rather than seize more oversight, legislators decided to make it easier for upstart haulers to enter the market by allowing the PSC to consider the benefits of competition as a factor in reviewing garbage-hauling applications.

That's how, 33 years later, Johnson was able to challenge Republic in Gallatin

County. At the hearing for his application, PSC commissioners heard testimony from an Oregon garbage-industry representative who testified that the typical profit margin for a disposal company in her state is 8 to 12 percent. Republic Services earned a 41 percent profit margin in Montana in 2014 (it was 21 percent in 2017, according to the company). Commissioners voted 3–2 to let Johnson haul trash, writing that Republic's profits were "unreasonably high" and that the public would benefit from competition.

But even as Johnson seeks to expand into Missoula, his Gallatin County permit is still tied up in court. In May of this year, just days before L&L's hearing on its Missoula permit, Republic appealed the

PSC's earlier ruling to the Montana Supreme Court. The company argues that the commissioners are trying to regulate garbage rates under the guise of encouraging competition.

## 'Rules of the game'

Some Missoulians know Glenda Bradshaw as the woman who keeps a hard hat and safety glasses on hooks in her Northside office, where she manages the largest corporate garbage enterprise in the state. Others know her as the businesswoman who opened Clyde Coffee on the Hip Strip.

Bradshaw started Clyde in 2015, shortly after completing a return to school at the University of Montana. She'd planned to transition from a career at FedEx to one in accounting. Instead, she opened her own business. The venture was based on thorough market research, including a 60-page business plan informed by her firsthand studies of other area coffee shops. "I would sit at all times of the day at competitors and literally just count customers," she told the *Missoulian* when Clyde opened.

Bradshaw may manage a monopoly, but she also understands competitive mar-



photo by Amy Donovan

Republic Services has attained "World Class" status, an internal performance benchmark attained by fewer than 10 percent of Republic's landfills.



ketplaces. And she says Johnson and PSC commissioners are playing with fire. While Republic's complete control over Missoula County garbage is an exception statewide, so is the new situation in Gallatin County, where multiple for-profit haulers are competing for the same customers.

"I feel like it's a very short-sighted, one-dimensional argument that the PSC is trying to push, and that is that free-market capitalism is always better, that competition is always better. And I say to them, what we have created, which does not look like that system, is way better." Bradshaw oversees hauling divisions in Billings, Bozeman and Missoula from the company's state headquarters on Rodgers Street. Republic runs 23 trucks in its Missoula division with 42 Teamster-affiliated drivers. The rest of its 70-plus Missoula employees handle other aspects of operations, maintenance, a small call center and the landfill.

Vertical integration, or ownership of each stage of a supply chain, is key to Republic's corporate strategy, according to the company's Securities and Exchange Commission disclosures. In its annual report, under the header "price increases," the company states that it seeks to secure increases "necessary to offset increased costs, improve our operating margins, and earn an adequate return on our substantial investments." The biggest threat to price hikes, the report continues, is competitors.

While Johnson argues that competition would keep prices in check and improve garbage collection, Bradshaw says the security of a captive market has allowed Republic and its predecessors to invest in high-quality service. She counts the ways: Trash collection ranks as one of the most dangerous jobs in the country, yet Republic has never had a truck roll over, or crash at an intersection, or kill anyone in Montana. Bradshaw says the state pays only \$.75 in workers-compensation claims to Republic employees for every \$1 the company pays into the fund. Its Missoula landfill has attained "World Class" status within the company, an internal designation based on safety, density, customer satisfaction and other criteria that fewer than 10 percent of Republic's landfills have met, company environmental engineer Jake Paetsch says. And Republic provides a curbside recycling program — a service L&L found unprofitable and discontinued in Gallatin County.

But Bradshaw says the biggest benefit of Republic's local monopoly — and of all Montana haulers without trash-collecting competition — is that it enables the company to serve hard-to-reach rural customers. When setting its rates, Republic

routes to subsidize prices in rural areas, where cost-per-pickup can be much higher.

Practically speaking, new competitors don't have to do that. When applying for his Gallatin County permit in 2015, Johnson explained to commissioners that he would start his business by "cherry-picking" certain areas to service. (Last month, he told commissioners in Missoula that his earlier use of that word haunts him, and that he offers service to anyone who requests it, without advertising in particular neighborhoods.) Still, by making the "unprecedented" move to "step on someone else's permit," L&L threatens to start a race to the bottom and introduce "pricing chaos," Bradshaw says. She says rates in Gallatin County have remained static since L&L entered that market, but that if the PSC grants L&L a permit for Missoula County, it will be

surprise reelection defeat after three terms in office, spoke on behalf of the 24,000 rural Missoula County residents whom she feared would bear the brunt of a new garbage war. Curtiss was also asked if she'd heard any complaints about Republic's trash service during her years as a county official. "The only complaint is who is going to pick up the dead deer?" she said, adding that Republic was happy to haul away roadkill if it was lying along a company route. Republic then called Linda McCarthy, head of the Missoula Downtown Association. Had she ever received complaints about garbage service from businesses in the city center? McCarthy said she hadn't.

The onus was on L&L to prove to the PSC that Missoula County has an unmet need for better garbage service, and Cur-

In one representative affidavit, the Thomas Meagher Bar complained about the company's refusal to pick up its dumpster one week because it was frozen to the ground under "seemingly standard winter conditions."

To Johnson's disappointment, only eight of his affidavit-signing witnesses came to the hearing, two of whom were roommates of the employee who collected affidavits. Johnson had met with Missoula mayor John Engen about his plans, but the city opted not to endorse "one private business over another," communications director Ginny Merriam says. L&L's somewhat slim showing gave Republic's attorney, Mercer, an opening to ridicule L&L's witnesses as Republic's most "powerful proof" that a trash competitor isn't needed in Missoula County.



photo by Amy Donovan

**Later this year, the Public Service Commission will rule on whether to allow competition into the Missoula County garbage market.**

headed further down a road toward de facto deregulation, at which point, she says, customers on the margins tend to lose. Then, too, the most powerful player in garbage may decide to start playing hardball. Any Missoula hauling competitor would have no choice but to pay to use Republic's landfill — if the company lets them.

Republic isn't making any promises.

"If the rules have changed, then we'll play by the new rules of the game," Bradshaw says.

### 'It's that easy'

L&L's hearing before the PSC began on May 21 and lasted three long days. When Republic opened its case near the end of the second day, the company's attorneys called county commissioner Jean Curtiss as their first witness.

tiss and McCarthy struck at the heart of that argument. If rural residents aren't complaining, and downtown businesses aren't complaining, is it possible that Republic really does "compete against ourselves," as Bradshaw told the commission? That maybe the corporate goliath is actually a "poster child" for corporate responsibility?

Both companies came armed with lists of witnesses who pledged to testify that their garbage service was either substandard or excellent. In fact, Johnson's first move when scoping Missoula County was to hire someone to go door-to-door, asking people how they felt about their trash provider. The result is a collection of roughly 100 affidavits signed by residents and local businesses that say they aren't satisfied with Republic. Some complain of poor customer

Nonetheless, at least three commissioners expressed skepticism at Republic's demand that the PSC, in commissioner Brad Johnson's words, "protect an unregulated monopoly." Commissioners Roger Koopman and Tony O'Donnell at times waxed poetic with witnesses about the commissioners' faith in the free market. But no one boiled down L&L's argument better than witness Kathy Brodie, a partner at Ron's Auto Refinishers. "At this point, they can charge us whatever they want," she said. "I believe that Republic could use some competition. It's that easy."

Johnson will learn later this summer whether the PSC thinks what was good for Gallatin County is good for Missoula County. If the commissioners do rule in his favor, the ensuing battle for Missoula's trash is almost certain to raise a stink. *f*