

# Landfill Disposal Agreement/Exclusivity: Federal District Court Addresses Action for Breach of Contract



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A United States District Court (E.D. Tennessee) (“Court”) addressed in an August 11th Memorandum and Order (“Order”) a breach of contract action involving a landfill disposal agreement. See *Advanced Disposal Services Tennessee Holdings, Inc. v. Lusk Disposal Services, Inc.*, 2020 WL 4597165.

The issue considered was whether an exclusivity provision in the landfill disposal agreement was enforceable.

Lusk Disposal Services, Inc., (“Lusk”) is a solid waste collection and transport company based in Princeton, West Virginia. The company operates landfills. Because of its expansion of a landfill and certain restrictions in other counties, Lusk needed to utilize another landfill to dispose of solid waste on a temporary basis.

A Lusk representative contacted the Advanced Disposal Services Tennessee Holdings, Inc., (“Advanced Disposal”) General Manager and advised him of their temporary need for access to additional disposal sites. The companies are stated to have agreed to a rate of \$22.75 per ton.

The Lusk representative (“Smith”) emailed the Advanced Disposal General Manager on March 3, 2017 asking to use the Blountville Landfill on March 6, 2017. A completed credit application was also submitted.

The General Manager emailed Smith a disposal service agreement which included Exhibit A. This provision included a space to fill in price and volume terms. Some sections were stated to have been completed and others were not. The Court further noted:

For example, at the top of page three, the agreement contained the following duration provision:

The term of this agreement shall be o until final completion of the project identified on Exhibit A; or o for a period of \_\_\_ months from the effective date. Customer grants contractor the exclusive right of disposal of Customer's waste material during the term and for any renewals.

Appleby did not complete this section. This section provides that if the contract is for a specific duration, the customer also agrees to dispose all its waste material with Advanced Disposal. This is the “exclusivity” provision. As noted, Appleby left it blank.

Smith is stated to have written in the price per ton of waste material disposed of and the phrase no “put or pay” agreement, and no volume requirements. The duration provision was left blank since Lusk was

only interested in a temporary arrangement and the Advanced Disposal General Manager is stated to have never mentioned that the company required either a specific duration or an exclusivity term. Lusk executed the agreement.

Lusk began delivering waste material to the Advanced Disposal landfill. It paid all invoices at the time of delivery or in a timely manner pursuant to credit terms. Subsequently, an Advanced Disposal employee noticed that the identified landfill to be utilized was incorrect and emailed the General Manager to correct the error.

The General Manager is stated to have added in the additional comment section of the corrected disposal agreement that transfer waste are estimated at 1500 tons a month. However, the Order notes that the General Manager “did not mention that he changed the duration portion on page three of the contract to 12 months” (triggering the exclusivity provision). Neither Advanced Disposal nor Lusk personnel are stated to have noticed the additional terms that had been asserted. These were terms that had not been included in the initial contract nor ever discussed with Lusk personnel.

The Court states that Lusk agreeing to an exclusivity provision would have fundamentally altered the company’s entire business operations. It found credible testimony of Lusk personnel that the company would not have assented to those terms if they had been aware of them. Lusk was in the disposal business and already had contracts with six other landfills in Virginia and West Virginia. Further, it operated its own landfill.

The Court concluded that it would have made no sense for Lusk to have agreed to haul all of its waste material from West Virginia to Tennessee. This posed both geographical/distance issues. In addition, Lusk could literally not agree to an exclusivity provision without violating certain county ordinances in which it operated that had flow control requirements (i.e., prohibited transporting solid waste outside the county for disposal). As a result, Lusk is stated to have believed it had negotiated a non-exclusive agreement for an indefinite term that was valid as long as it needed the additional space for disposal of its waste material.

Lusk ceased utilizing the Advanced Disposal landfill after April 17th. Some time passed with no further communication between the parties. However, after the previous Advanced Disposal General Manager left the company, the new General Manager advised Lusk that it was in breach of the disposal agreement (citing to a duration provision of 12 months which triggered the exclusivity provision).

Lusk refused to pay Advanced Disposal. Advanced Disposal filed an action of breach of contract in the United States District Court.

The Court notes that in Tennessee a valid, enforceable contract requires consideration and mutual assent, manifested in the form of an offer and acceptance (i.e., there must be a meeting of the minds). It further states that mutuality of assent is determined by assessing the parties’ manifestation according to an objective standard.

The initial landfill disposal agreement is deemed by the Court a valid contract (noting the various terms that had been negotiated). It had been executed and Lusk began making deliveries pursuant to it. The Court further discounted the fact that no party produced an agreement that Advanced Disposal had signed. This initial contract:

- Had no volume requirements
- Was of indefinite duration
- Did not have an exclusivity provision

The Court rejects Advanced Disposal arguments that the subsequent revised agreement that included the 12-month term and exclusivity provision superseded the initial agreement. The Court recognized that Lusk signed the subsequent contract. However, it cited an exception in the case law where:

Neglect to read is not due to carelessness alone, but was induced by some stratagem, trick, or artifice on part of one seeking enforcement of the contract.

Lusk is determined to have been induced by “some trick of Appleby’s that excused their not reading the entire contract again” (reviewing the facts surrounding the revision and execution of the subsequent agreement). Advanced Disposal’s General Manager did not just send the disposal agreement with the corrected verbiage regarding the landfill but changed a material term (i.e., duration/exclusivity). Advanced Disposal was deemed to have a duty to tell Lusk of these changes.

The Court concludes that Advanced Disposal is not entitled to any damages for breach of contract. Lusk is deemed to have entirely satisfied its obligations under the agreement.

A copy of the Order can be downloaded [here](#).