

FILED  
LEAVENWORTH CO. KS

2012 MAR 26 PM 4:23

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

Division \_\_\_\_\_

CLERK OF DIST COURT  
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STATE OF KANSAS, *ex rel.* )  
DEREK SCHMIDT, Attorney General, )

Plaintiff, )

v. )

Case No. 2012CV139

NATIONWIDE ENVIROSERV INC. )  
d/b/a NATIONWIDE ENVIRONMENTAL )  
SERVICES )

Defendant. )

\_\_\_\_\_  
(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 26 day of March, 2012, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 75-7507(a). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Jackie Williams, Assistant Attorney General. Defendant appears through the undersigned counsel.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

**PARTIES, JURISDICTION AND VENUE**

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas False Claims Act ("KFCA"), K.S.A. 75-7501 *et seq.*

3. Defendant Nationwide Environmental Services, Inc. is a for profit corporation organized and existing under the laws of New York.

4. As referred to herein, "Defendant" means Nationwide Environmental Services, Inc. and its employees, directors, officers, owners, members, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates, and successors.

5. Defendant has a principal place of business at 98A Tec Street, Hicksville, New York 11801.

6. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case pursuant to K.S.A. 75-7501 *et seq.*

7. Defendant stipulates and admits that the Court has personal jurisdiction over the parties pursuant to K.S.A. 60-308(b).

8. Defendant stipulates and admits that venue is proper in this Court pursuant to K.S.A. 75-7510.

9. Defendant is a "person" within the definition of K.S.A. 75-7502(d).

10. Defendant presented or caused to be presented "claims" to "political subdivisions" as those terms are defined by K.S.A. 75-7502(b) and (c) respectively.

#### **DEFINITIONS**

As used herein, the following terms shall be given their assigned meanings:

11. "Claim" includes any request or demand, whether under contract or otherwise, for money, property or services made to any employee, officer or agent of the State or any Political Subdivision thereof or made to any contractor, grantee or other recipient if the State or any

Political Subdivision thereof provides any portion of the money, property or services which is requested or demanded, or if the State will reimburse such contractor, grantee or other recipient for any portion of the money or property which is requested or demanded.

12. “Knowing” and “knowingly” means that a person, with respect to information, does any of the following: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information.

13. “Political Subdivision” means political or taxing subdivisions of the State of Kansas, including municipal and quasi-municipal corporations, boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups or administrative units thereof, receiving or expending and supported, in whole or in part, by public funds and any municipality.

14. “Represent” means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “Represent,” including, but not limited to “Representation,” “Misrepresent,” and “Misrepresentation.”

15. The “State” means the State of Kansas and Political Subdivisions thereof.

### **VIOLATIONS**

16. Defendant, while presenting or causing to be presented Claims to the Political Subdivisions set forth in paragraph twenty-five (25) herein, committed acts and practices in violation of the KFCA, which acts and practices include, but are not limited to the following:

- a. Defendant knowingly presented or caused to be presented Claims to said Political Subdivisions for unordered and sample products after offering free samples to said Political Subdivisions and then shipping an amount beyond the agreed upon free sample amount in violation of K.S.A. 75-7503(a)(1);
- b. Defendant knowingly presented or caused to be presented Claims to said Political Subdivisions for unordered products after sending products without receiving orders from said Political Subdivisions for such products in violation of K.S.A. 75-7503(a)(1);
- c. Defendant sent false records to said Political Subdivisions in the form of invoices demanding payment for the unordered and sample products in violation of K.S.A. 75-7503(a)(2);

17. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and solely for the purpose of settlement.

#### **INJUNCTIVE RELIEF**

18. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph sixteen (16) herein, and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

19. Defendant agrees to refrain, and to be permanently enjoined, from presenting or causing to be presented false Claims to any employee, officer, or agent of the State.

20. Defendant agrees to maintain complete and accurate records of any complaints, refund requests or cancellation notices received from the State and, upon request by the Attorney General, shall provide a current, full and accurate list of said complaints, requests and notices to the Attorney General that includes: the name of the Political Subdivision; address; the nature of the complaint; the date of the complaint; the refund request or cancellation notice; and the date of resolution or refund (if applicable).

21. Defendant agrees to comply with all Kansas laws, statutes, rules and regulations, relating to false or fraudulent Claims, specifically, but not limited to, the Kansas False Claims Act, K.S.A. 75-7501 *et seq.*

22. Defendant agrees to cooperate with the Attorney General in investigating and remedying any complaints filed with the Attorney General. Specifically, Defendant agrees to respond within fifteen (15) days of receiving any complaint, investigative inquiry, or subpoena issued by the Attorney General.

23. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure, for the purpose of avoiding compliance with the terms of this Consent Judgment.

24. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment, or within fifteen (15) days after any person assumes such position or responsibilities.

#### **RESTITUTION**

25. Defendant agrees to provide a full refund to the following Political Subdivisions, in the amounts set forth below:

- a. City of Clay Center: \$1,400.00;
- b. City of Concordia: \$982.57;
- c. City of Hardtner: \$565.98;
- d. City of Hays: \$2,243.90;

- e. City Hoisington: \$2,648.68;
- f. City of Kanopolis: \$427.62;
- g. City of Leoti: \$465.92;
- h. City of Linwood: \$129.16;
- i. City of Lucas: \$129.16;
- j. City of Minneapolis: \$129.16;
- k. City of Mound Valley: \$548.02;
- l. City of Paola: \$130.26;
- m. City of Ulysses: \$818.52.

26. Defendants agree to pay the aforementioned amounts in two (2) installments as follows:

- a. Defendants shall pay \$5,309.47 on or before April 1, 2012.
- b. Defendant shall pay the remaining \$5,309.48 on or before July 1, 2012.
- c. Defendant shall be responsible for the timely submission and delivery of each of the aforementioned payments to the Attorney General.
- d. Defendant shall make such payments in the form of a cashier's check, money order or check disbursed through an attorney's trust account, payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General  
ATTN: Jackie Williams, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

27. Defendant agrees that pursuant to 11 U.S.C. 523(a)(2)(A) and 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid restitution shall not be

dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

28. Such payments shall be distributed by the Attorney General to the Political Subdivisions as set forth in paragraph twenty-five (25) herein.

**COSTS AND ATTORNEY FEES**

29. Defendant agrees to pay to the Attorney General four thousand three hundred and eighty-one dollars and five cents (\$4,381.05) in investigative and attorney fees, pursuant to K.S.A. 75-7503.

30. Defendant shall make such payment on or before October 1, 2012 in the form of a cashier's check, money order or check disbursed through an attorney's trust account, payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General  
ATTN: Jackie Williams, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

31. Defendant agrees that pursuant to 11 U.S.C. 523(a)(2)(A) and 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

**GENERAL PROVISIONS**

32. Jurisdiction is retained by this Court for the sole purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

33. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

34. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

35. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent this Consent Judgment as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to this Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

36. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.



**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant is enjoined from the acts and practices set forth in paragraph sixteen (16) herein.

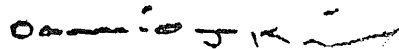
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall pay restitution to the state or political subdivisions identified in paragraph twenty-five (25) in the amounts set forth therein.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$4,381.05 in investigative and attorney fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant pay all costs associated with this action.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas False Claims Act, specifically K.S.A. 75-7507(a), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

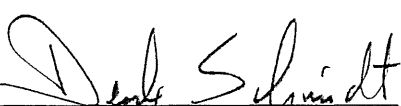
**IT IS SO ORDERED.**

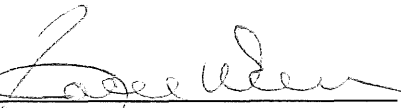


DISTRICT COURT JUDGE

APPROVED:

PLAINTIFF, THE PEOPLE OF THE STATE OF KANSAS

By:  Date: 3/21/2012  
Derek Schmidt, #17781  
Kansas Attorney General  
Office of Kansas Attorney General, Derek Schmidt  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751

By:  Date: 3/21/2012  
Jackie Williams, #07333  
Assistant Attorney General  
Office of the Kansas Attorney General  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751

By: Whitney Casement Date: 3-22-12  
Whitney Casement, Student License #4123  
Legal Intern  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
Tel: (785) 296-3751

FOR NATIONWIDE ENVIRONMENTAL SERVICES, INC.

By: Christopher Sook Date: 3/12/2012  
Christopher Sook, #20737  
Sloan, Eisenbarth, Glassman, McEntire & Jarboe, LLC  
534 South Kansas Ave.  
Suite 1000  
Topeka, Kansas 66603  
(785) 357-6311