

FILED
DISTRICT COURT
OTOE COUNTY, NEBR.

2016 AUG 23 AM 9:27

JANIS A. RITGE, CLERK

IN THE DISTRICT COURT OF OTOE COUNTY, NEBRASKA

In the Matter of:)	CASE NO: CI 16- <u>178</u>
)	
WASTE CONNECTIONS OF)	
NEBRASKA, INC.,)	ASSURANCE
)	OF
)	VOLUNTARY
Respondent.)	COMPLIANCE
)	
)	

PREAMBLE

This Assurance of Voluntary Compliance (hereinafter Assurance) is entered into by the State of Nebraska by and through Douglas J. Peterson, Attorney General, and the undersigned Assistant Attorneys General, and by Respondent Waste Connections of Nebraska, Inc. pursuant to Neb. Rev. Stat. §§ 59-1610 and 87-303.05(2).

PARTIES

1. **Respondent:** Waste Connections of Nebraska, Inc. (hereinafter Waste Connections) is a for-profit corporation organized under the laws of the State of Delaware. Waste Connections is a foreign corporation registered with the Nebraska Secretary of State with currently active status. Its principal office address is 3 Waterway Square Place #110, The Woodlands, Texas 77380. Waste Connections uses numerous business or trade names while conducting business in Nebraska. For purposes of this Assurance, "Waste Connections" or "Respondent" includes any of the business or trade names under which Waste Connections of Nebraska conducts business in the State of Nebraska.

2. **Relator:** Douglas J. Peterson is the duly elected, qualified, and acting Attorney General of the State of Nebraska. Relator commenced an investigation into the business and trade acts and practices of Respondent in the State of Nebraska based on reasonable cause to believe that Respondent engaged in business and trade acts and practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter Consumer Protection Act), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (hereinafter Uniform Deceptive Trade Practices Act).

3. **Parties:** Relator and Respondent shall be collectively referred to as “the Parties” throughout this Assurance.

AUTHORITY, VENUE, JURISDICTION, AND CHOICE OF LAW

4. In the enforcement of the Consumer Protection Act, Relator may accept an assurance of discontinuance of any act or practice deemed in violation of the Consumer Protection Act pursuant to Neb. Rev. Stat. § 59-1610. Furthermore, pursuant to § 87-303.05(2), when the Relator has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, Relator may accept an assurance of discontinuance of any deceptive trade practice or unconscionable act listed in Neb. Rev. Stat. §§ 87-302 or 87-303.01. An assurance of discontinuance is also known as an assurance of voluntary discontinuance, assurance of compliance, or assurance of voluntary compliance.

5. The Parties hereby agree that venue regarding the interpretation or enforcement of this Assurance is before the District Court of Otoe County, Nebraska (hereinafter Court) pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1610,

and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-303.05; that the Court has subject matter jurisdiction over this matter; that the Parties herein submit to the personal jurisdiction of the Court; that the Court retains jurisdiction regarding the interpretation and enforcement of this Assurance; and that the laws of the State of Nebraska control and apply to the interpretation and enforcement of this Assurance.

STATE OF NEBRASKA ALLEGATIONS

General Information

6. In 1998, Waste Connections of Nebraska was incorporated. On July 27, 1998, Waste Connections registered as a foreign corporation conducting business in Nebraska.

7. After incorporation, Waste Connections engaged in the business of providing integrated solid waste services throughout Nebraska.

Operations in Syracuse, Nebraska

8. In December 2002, Waste Connections entered into an Agreement for Garbage Hauling and Disposal with the City of Syracuse, Nebraska.

9. The Agreement for Garbage Hauling and Disposal specified that Waste Connections would have the exclusive right to provide the collection, transportation, transfer, and disposal of solid waste generated within the Syracuse corporate limits.

10. For every customer requesting service under the Agreement for Garbage Hauling and Disposal, Waste Connections provided weekly residential curbside service for garbage and biweekly residential curbside service for recycling. Waste Connections charged a fixed rate, subject to periodic increases, for services provided under the Agreement.

11. In November 2012, Waste Connections and the City of Syracuse entered into a new Agreement for Garbage Hauling and Disposal.

12. Waste Connections provided essentially the same services under the 2012 Agreement as it did under the 2002 Agreement.

13. Despite promising to provide curbside recycling services under the Agreement, Waste Connections failed to properly handle consumers' curbside recycling materials at times during 2012 and 2013. During that time period, Waste Connections treated some recycling materials and garbage from Syracuse, NE in the same manner, transporting at least some materials to a landfill, instead of recycling those materials.

WASTE CONNECTIONS RESPONSE TO ALLEGATIONS

14. Waste Connections denies that any recycling was mishandled in Syracuse, Nebraska during 2012 or 2013, or at any time thereafter. Waste Connections further denies that it has violated the Consumer Protection Act or the Uniform Deceptive Trade Practices Act under the facts alleged. Waste Connections has shipping documentation that certain recycling volume was taken from Syracuse and delivered to the recycler during this time period. The former employees whose responsibility included handling waste and recycling in Syracuse, NE in 2012 and 2013 who alleged after their employment ended that they did not handle recycling correctly in Syracuse during this time period have not worked for the company since at least 2013. Waste Connections states that given it was paid for recycling tonnage during this time period, while it had to pay a landfill to dispose of solid waste in a landfill, it would make no economic sense for Waste Connections to throw away recycling because it would have lost money doing so.

15. Waste Connections further states that in the interest of refraining from a drawn-out and expensive dispute with the State of Nebraska, Waste Connections has chosen to resolve this matter through this Assurance.

RECITALS

16. IT NOW APPEARS THAT, for the sake of judicial efficiency and preservation of resources, the Parties are willing to voluntarily enter into this Assurance in order to avoid the costs and uncertainty of litigation.

17. IT FURTHER APPEARS THAT, Relator, acting on behalf of the general welfare of the public and citizenry of the State of Nebraska, is willing to accept this Assurance in lieu of bringing formal action against Respondent provided the following provisions contained herein are fully complied with and met by Respondent.

18. THEREFORE, IT IS HEREBY AGREED by Respondent that the following Assurances are made and will be complied herewith as of the date of Court approval of this Assurance.

ASSURANCES

19. Respondent shall not engage in any unfair, unconscionable, or deceptive act or practice in violation of the Consumer Protection Act, the Uniform Deceptive Trade Practices Act, or any other applicable consumer protection law within the State of Nebraska.

20. Respondent shall properly collect, transport, transfer, and dispose of all solid waste.

21. Respondent shall properly collect, transport, transfer, and dispose of all

recyclable materials placed in recycle bins by customers. Relator understands that recycling and solid waste pick-up workers must make very quick decisions when looking at recycling containers set out by customers as to whether non-recyclables were included in recycling-only containers. If an employee determines non-recyclables were included in recycling-only containers, the contents of such container will be treated as solid waste.

22. Respondent shall ensure that all employees and/or independent contractors handling solid waste or recyclable materials within their scope of employment with Respondent receive proper instruction for the handling of both solid waste and recyclable materials. Respondent shall monitor all employees and/or independent contractors to ensure that they are complying with Respondent's policies regarding the handling of solid waste and recyclable materials.

MONETARY PAYMENT

23. Respondent shall pay fifty thousand dollars (\$50,000.00) to the City of Syracuse, Nebraska to be used for city beautification projects or improvements, within thirty (30) calendar days of Court approval of this Assurance, with payment to be made via certified check or money order.

24. Respondent shall pay twelve thousand five hundred dollars (\$12,500.00) to Relator within thirty (30) calendar days of Court approval of this Assurance, with payment to be made via certified check or money order. The payment made pursuant to this paragraph shall be placed in the State Settlement Cash Fund. These funds may be used for attorney's fees and other costs of investigation, future consumer protection or privacy enforcement, consumer education, litigation, to defray the costs of the inquiry

leading hereto, or for other uses permitted by state law at the sole discretion of the Nebraska Attorney General. The Parties acknowledge that the payment described in this paragraph is not a fine or penalty, or payment in lieu thereof.

25. Respondent shall pay an additional two hundred thousand dollars (\$200,000.00) to the Relator if, within three (3) years of Court approval of this Assurance, Respondent violates any of the provisions of this Assurance. Relator agrees that isolated alleged mistakes in recycling pickup by trash or recycling hauling employees will not be considered a violation of this Assurance. Such funds shall be placed in the State Settlement Cash Fund. The Parties acknowledge that the payment described in this paragraph is not a fine or penalty, or payment in lieu thereof and that this in no way limits any other action or proceeding that can be made by Relator against Respondent pursuant to law.

GENERAL PROVISIONS

26. This Assurance constitutes a complete settlement and release by the Relator of all civil claims and causes of action against Respondent arising out of the conduct alleged in this Assurance that existed as of the date of Court approval of this Assurance and that could have been asserted by the Relator, under the Consumer Protection Act, Uniform Deceptive Trade Practices Act, or any other consumer protection laws that give the Relator the authority to bring action. This Assurance does not affect a consumer's private right of action.

27. Nothing in this Assurance shall be construed so as to limit or bar any other person or entity from pursuing any and all available legal remedies against Respondent;

nor is it the intent of the Parties hereto that this Assurance shall create or support a cause of action against Respondent by non-parties to this Assurance.

28. Respondent understands that this Assurance shall not be construed as an approval of or sanction by the Relator of the Respondent's business practices, nor shall Respondent represent the Assurance as such approval. The Parties further understand and agree that any failure by the Relator to take any action in response to any information submitted pursuant to this Assurance shall not be construed to be an approval of or sanction of any representations, acts, or practices of Respondent, nor shall any inaction by the Relator be considered a waiver by the Relator of any rights under this Assurance or the law.

29. If any portion, provision, or part of this Assurance 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.

30. In the event any law, regulation, or order is enacted, adopted or issued by the federal government, the State of Nebraska or any of its agencies, any relevant local government or a court of competent jurisdiction with respect to any issue specifically covered by this Assurance, the requirements of such law, regulation or order, after written notice by Respondent to the Relator, shall replace any provision contained herein so that compliance with such law, regulation, or order shall be deemed compliance with this Assurance.

31. Pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2), proof of failure

to comply with the Assurance shall be prima facie evidence of a violation of applicable Nebraska statutes in any civil action or proceeding hereafter commenced by the Relator against Respondent.

32. This Assurance is made and entered into without trial or finding of fact or conclusions of law by a court. This Assurance does not constitute evidence against or an admission by Respondent of any issues of fact or any violations of law in the past or that Respondent has engaged in any inappropriate activities or other wrongdoing, and shall not be used in a manner inconsistent with these terms.

33. The Parties acknowledge and represent that: (a) each party has read this Assurance in its entirety and fully understands all of its terms and conditions and the ramifications and consequences thereof; (b) each party unconditionally consents to the terms of this Assurance; (c) each party has either consulted with or had ample opportunity to consult with legal counsel of their choosing prior to executing this Assurance; (d) each party has freely and voluntarily signed this Assurance; and (e) the consideration received by each party as described in this Assurance is adequate.

34. The Parties acknowledge and agree that this Assurance contains the entire understanding of the Parties and supersedes and forever terminates all prior and contemporaneous representations, promises, agreements, understandings, and negotiations, whether oral or written, with respect to its subject matter. The Parties further agree that this Assurance may only be amended, modified, or supplemented by a duly executed writing signed by each Party to this Assurance.

35. The Parties agree that they may execute this Assurance in any number of

counterparts, each of which shall be deemed an original hereof, but which together shall constitute one and the same instrument and agreement, and that facsimile or electronically-transmitted signatures may be attached to this Assurance and shall be binding on such party as an original signature.

36. Any notices, statements, or other written documents required by this Assurance shall be provided by first class mail and emailed to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the Party changing such address:

A. For the Nebraska Attorney General's Office:

Abigail M. Stempson
Assistant Attorney General
Chief, Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol Building
Lincoln, NE 68509
abigail.stempson@nebraska.gov

B. For Waste Connections of Nebraska, Inc.:

Legal Counsel
3 Waterway Square Place # 110
The Woodlands, Texas 77380

With a copy to:

Brian C. Buescher, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
brian.buescher@kutakrock.com

WHEREFORE, each undersigned representative of the Relator and Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this

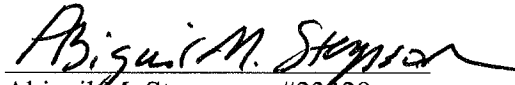
Assurance and legally bind such Party to its terms. The following signatures are affixed hereto as of the dates written below in agreement hereof.

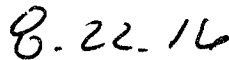
JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

FOR RELATOR:

THE STATE OF NEBRASKA, ex rel.
DOUGLAS J. PETERSON, Attorney General

By: Douglas J. Peterson, Attorney General, #18146

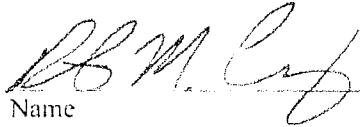
By: 
Abigail M. Stempson, #23329
Assistant Attorney General
Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509-8920
Phone: (402) 471-3833
abigail.stempson@nebraska.gov


Date


Counsel for the State of Nebraska

FOR RESPONDENT:

Waste Connections of Nebraska, Inc.

By:  August 17, 2016
Name Date

Vice President, Deputy General Counsel
Title

By:  8-18-2016
Date

Brian C. Buescher, #21920
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Counsel for Waste Connections of Nebraska, Inc.