

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, ex rel. DAVE YOST,
OHIO ATTORNEY GENERAL
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 4321

Plaintiff,

v.

CLOSED LOOP REFINING AND RECOVERY,
INC.
c/o Brent Benham,
3033 North Central, Suite 810
Phoenix, Arizona 85012,

CLOSED LOOP GLASS SOLUTIONS, LLC
c/o NRAI, statutory agent,
1300 E. 9th Street,
Cleveland, Ohio 44144,

GARRISON SOUTHFIELD PARK, LLC
c/o Corporation Service Company,
statutory agent
3366 Riverside Drive, Suite 103
Upper Arlington, Ohio 43221,

OLYMBEC USA LLC
c/o CT Corporation System, statutory agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219,

Defendants.

Case No.

Hon.:

Complaint for Injunctive Relief and Civil Penalties

From 2012 to 2016, Closed Loop Refining and Recovery, Inc. and Closed Loop Glass Solutions, LLC (collectively "Closed Loop") operated two glass recycling facilities at two properties it rented in Columbus, Ohio. Those properties were owned by Garrison Southfield Park,

LLC and Olymbec USA, LLC. At those properties, Closed Loop would take in lead-containing cathode ray tube (CRT) glass, ostensibly for recycling and shipment off site. But by 2015 Closed Loop had piled up millions of pounds of CRT glass—a hazardous waste—without recycling or shipping the glass off site. By mid-2016, Closed Loop had ceased all operations at the properties, leaving them full of intact CRTs and broken, lead-containing glass.

Plaintiff, the State of Ohio, on relation of the Attorney General Dave Yost, and at the written request of the Director of Environmental Protection, brings this action to enforce Ohio’s hazardous waste laws, codified in R.C. Chapter 3734, and the rules adopted under that Chapter. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

Defendants

1. Defendant Closed Loop Refining and Recovery, Inc. (“Closed Loop Refining” or “Closed Loop” when combined with “Closed Loop Glass”) is a corporation incorporated in the State of Arizona. Closed Loop Refining registered with the Secretary of State to do business in Ohio on August 13, 2012. On September 28, 2016, the Secretary of State cancelled Closed Loop Refining’s license for failure to maintain a statutory agent. A true and accurate copy of the Certificate of Cancellation by the Secretary of State of Ohio is attached to the Complaint as Exhibit A, and incorporated by reference.

2. Defendant Closed Loop Glass Solutions, LLC (“Closed Loop Glass” or “Closed Loop” when combined with “Closed Loop Refining”) is a limited liability company organized under the laws of the State of Arizona and registered with the Secretary of State to do business in Ohio.

3. Defendant Garrison Southfield Park, LLC (“Garrison”) is a limited liability

company incorporated in the State of Delaware and registered with the Secretary of State to do business in Ohio.

4. Defendant Olymbec USA LLC (“Olymbec”) is a limited liability company incorporated in the State of Delaware and registered with the Secretary of State to do business in Ohio.

5. Closed Loop, Garrison, and Olymbec are collectively referred to as “Defendants.”

6. Defendants are the proper parties to be named in this Complaint.

7. At all times relevant to the Complaint, each Defendant is, and has been, a “person” as that term is defined by R.C. 1.59(c), R.C. 3734.01(G), Ohio Adm.Code 3745-50-10(P)(6).

8. Defendants were “operators” of a hazardous waste facility as that term is defined in Ohio Adm.Code 3745-50-10(O)(5). An “operator” means the person responsible for the overall operation of the facility.

9. At all times relevant to this Complaint, Defendants Garrison and Olymbec are “owners” of a hazardous waste facility as that term is defined in Ohio Adm.Code 3745-50-10(A)(94). An “owner” means the person who owns a facility or part of a facility.

The Watkins Road and Fairwood Avenue Sites

10. From 2012 until 2016, Closed Loop Refining and its sister company Closed Loop Glass operated two CRT glass recycling facilities at two properties it rented in Columbus. One (the Watkins Road Site) was located at 1655 and 1675 Watkins Road, owned by Garrison (since 2013); the other (the Fairwood Avenue Site) was at 2200 Fairwood Avenue, owned by Olymbec (since 2014).

11. Closed Loop’s operations at Watkins Road covered approximately 420,000 square feet of the buildings. Closed Loop’s operations at Fairwood Avenue covered approximately

130,000 square feet.

12. At both facilities, Closed Loop accepted CRTs, mainly from televisions and computer monitors, for processing. At the Watkins Road Site, Closed Loop would accept and break CRTs, then transport the CRT glass to the Fairwood Avenue Site ostensibly for further processing and shipment to a downstream recycler.

Ohio's Hazardous Waste and CRT Laws and Rules

13. Because of its lead content, CRT glass is generally a hazardous waste due to exhibiting a toxicity characteristic for lead (toxicity – D008), as described in Ohio Adm.Code 3745-51-24, and must be handled according to Ohio's hazardous waste laws and rules.

14. In accordance with the conditional exclusion set forth in Ohio Adm.Code 3745-51-39, CRTs and CRT glass are not wastes if the CRTs and CRT glass are destined for recycling and if storage, labeling, and transportation requirements are complied with.

15. In addition, Ohio Adm.Code 3745-51-39 requires compliance with Ohio Adm.Code 3745-51-01(C)(8), prohibiting speculative accumulation.

16. Ohio Adm.Code 3745-51-01(C)(8) states that a material is not "accumulated speculatively" if the person accumulating the material can show the material is potentially recyclable and has a feasible means of being recycled; and that during a calendar year commencing January first, the amount of the material recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of the material accumulated at the beginning of the calendar year.

Hazardous Waste Allegations

17. In 2015, Closed Loop shut down recycling operations at the Fairwood Avenue Site.

18. The same year, Closed Loop failed to have a feasible means of recycling to qualify

for the conditional exclusion. Because of the this, the conditional exclusion of Ohio Adm.Code 3745-51-39 for CRTs and CRT glass no longer applied, and the CRT and CRT glass at both the Fairwood Avenue Site and the Watkins Road Site became subject to Ohio’s hazardous waste laws and rules retroactive to January 1, 2015.

19. On May 6, 2016, Closed Loop informed Ohio EPA that it was no longer operating at either the Watkins Road Site or the Fairwood Avenue Site and that Garrison and Olymbec had assumed possession of the facilities.

20. Closed Loop left behind millions of pounds of hazardous CRT glass and related materials at the two sites. Between the two warehouses, there was roughly 121 million pounds of mixed leaded and unleaded crushed glass and another 36 million pounds of other material.

21. At the Watkins Road Site, cardboard boxes containing CRTs and CRT glass covered approximately 90% of the space. This warehouse included a semi-enclosed room with a 40-foot long CRT crusher, a glass crushing machine, and another area with a 30-foot long demanufacturing line including a conveyor system and Gaylord containers for processed CRT components. Testing found lead-contaminated dust at the Site.

22. At the Fairwood Avenue Site, cardboard boxes containing CRTs and CRT glass covered approximately 90% of the space—over 19,000 containers in all. Some of those containers were deteriorating, and had collapsed, blocked aisles, or were spilling CRT glass onto the floor. Testing later found lead-contaminated dust on surfaces, the floor, and the walls.

Hazardous Waste Definitions

23. The CRTs at the Watkins Road Site and the Fairwood Avenue Site were “wastes” as defined in Ohio Adm.Code 3745-51-02.

24. The CRTs at the Watkins Road Site and the Fairwood Avenue Site exhibit the

toxicity characteristic for lead and are “hazardous wastes,” as set forth in R.C. 3734.01(J) and Ohio Adm.Code 3745-51-03 and Ohio Adm.Code 3745-51-24.

25. Since January 1, 2015, both the Watkins Road Site and the Fairwood Avenue Site are hazardous waste facilities as defined in Ohio Adm.Code 3745-50-10(F)(1). A hazardous waste facility includes all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

26. Defendants engaged in the “storage” of hazardous waste as that term is defined in R.C. 3734.01(M) and Ohio Adm.Code 3745-50-10(S)(11). “Storage” means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

27. At all times relevant to this Complaint, the Watkins Road Site and Fairwood Avenue Site have not been operating under a hazardous waste permit issued by the Director of Ohio EPA (Director”) in accordance with R.C. Chapter 3734.

Additional General Allegations

28. Revised Code 3734.11(A) states that no person shall violate any section of R.C. Chapter 3734 or any rule adopted under that chapter.

29. All rules cited in this Complaint were adopted pursuant to the Director’s authority set forth in R.C. Chapter 3734.12.

30. This matter was referred to the Ohio Attorney General for enforcement upon written request from the Director pursuant to R.C. 3734.13(C).

31. This Court has jurisdiction over the subject matter of this action and authority to grant the relief requested pursuant to R.C. 2307.382, 3734.10, 3734.13(C).

32. The acts alleged in this Complaint arise from “transacting any business within this

state” or, in the alternative, “contracting to supply services or goods in this state,” for purposes of R.C. 2307.382 and Rule 4.3(A) of the Ohio Rules of Civil Procedure.

33. At all times and locations, Defendants have purposefully availed themselves of this forum. The activities (or failures to act) and/or control, authority, direction, and responsibility over the activities (or failures to act) caused all environmental violations alleged in this Complaint in Ohio including Franklin County. Defendants have transacted business and/or contracted to supply services or goods in Ohio, and in Franklin County specifically, or have or had an interest in, use, and/or possess real property in Ohio and in Franklin County.

34. The Court has personal jurisdiction over Defendants because the causes of action alleged in this Complaint arise from Defendants “having an interest in, using, or possessing real property in this State,” and/or because the acts alleged in this Complaint arise from “transacting . . . business within this state,” for the purposes of R.C. 2307.382 and Ohio Rule of Civil Procedure 4.3(A).

35. As the allegations in this Complaint reveal, the exercise of specific jurisdiction over each Defendant is proper and consistent with due process.

36. Venue lies in the Franklin County Court of Common Pleas pursuant to Ohio Civil Rule 3(C) and 3(F).

37. Per Ohio Civil Rule 8(A), Plaintiff seeks civil penalties in excess of twenty-five thousand dollars (\$25,000.00) for the violations alleged herein.

38. The allegations contained in the preceding paragraphs are incorporated into each Count of this Complaint as if rewritten therein.

COUNT ONE

Defendants illegally stored and/or transported hazardous waste.

39. No person may treat, store, dispose, or transport hazardous waste at or to any premises in Ohio other than: (1) a hazardous waste facility operating under a hazardous waste permit issued in accordance with R.C. Chapter 3734; (2) a facility in another state operating under a license or permit issued in accordance with the Resource Conservation and Recovery Act of 1976 (“RCRA”), 43 U.S.C. 6921 as amended; (3) a facility in another nation operating in accordance with the laws of that nation; (4) a facility holding a permit issued pursuant to Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401, as amended; or (5) a hazardous waste facility that is operating under a permit by rule under rules adopted by the Director of the Environmental Protection Agency or that is not subject to permit requirements under rules adopted by the Director.

40. From January 1, 2015 and continuing to the present, Defendants stored hazardous waste at the Fairwood Avenue Site and/or the Watkins Road Site in violation of R.C. 3734.02(F).

41. Beginning in mid-2015 and until no later than May 6, 2016, Closed Loop transported or caused to be transported hazardous waste from the Watkins Road Site to the Fairwood Avenue Site, which does not have a hazardous waste permit, in violation of R.C. 3734.02(F).

42. The conduct or omissions of Defendants as described in this Count violate R.C. 3734.02(F) and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C.

3734.13(C).

COUNT TWO

Defendants established and/or operated a hazardous waste facility without a permit.

43. R.C. 3734.02(E) prohibits any person from establishing or operating a hazardous waste facility without a hazardous waste permit in accordance with R.C. Chapter 3734.05.

44. From January 1, 2015 and continuing to the present, Defendants established and/or operated a hazardous waste facility without a hazardous waste permit issued in accordance with R.C. 3734.05 at both the Fairwood Avenue Site and the Watkins Road Site in violation of R.C. 3734.02(E).

45. The conduct or omissions of Defendants as described in this Count violate R.C. 3734.02(E) and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT THREE

Defendants failed to develop and implement a written closure plan.

46. The owner or operator of a hazardous waste facility must have a written closure plan approved by the Director of Ohio EPA, even while the hazardous waste facility is in operation, as required by Ohio Adm.Code 3745-55-12. The owner or operator is required to begin closure no later than 30 days after receipt of the final volume of hazardous waste (unless there is a reasonable possibility the Site may receive additional waste). Ohio Adm.Code 3745-55-12(D).

47. From at least January 1, 2015 and continuing to the present, Defendants failed to have a written closure plan approved by the Director of Ohio EPA in accordance with Ohio

Adm.Code 3745-55-10 through 3745-55-20 and Ohio Adm.Code 3745-55-78. Defendants also failed to begin hazardous waste closure within 30 days of receipt of the final volume of hazardous waste.

48. The conduct or omissions of Defendants as described in this Count violate Ohio Adm.Code 3745-55-12 and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT FOUR
Defendants failed to close the Fairwood Avenue Site and/or
the Watkins Road Site in the manner required by Ohio law.

49. The owner or operator of a hazardous waste facility must close the facility in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escapes of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, as required by Ohio Adm.Code 3745-55-11.

50. From at least June 30, 2015 and continuing to the present, Defendants failed to complete closure activities in the manner required by Ohio Adm.Code 3745-55-11.

51. The conduct or omissions of Defendants as described in this Count violate Ohio Adm.Code 3745-55-11, and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief under R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to \$10,000 per day for each day of each

violation, including each day subsequent to the filing of this Complaint, under R.C. 3734.13(C).

COUNT FIVE

Defendants unlawfully failed to maintain a written estimate of closure cost.

52. The owner or operator of a hazardous waste facility shall maintain a written estimate of the cost of closing the facility and annually update the estimate to account for inflation, as required by Ohio Adm.Code 3745-55-42.

53. From at least January 1, 2015 and continuing to the present, Defendants failed to maintain a written estimate of the cost of closing the facility and failed to annually update that estimate to account for inflation.

54. The conduct or omissions of Defendants as described in this Count violate Ohio Adm.Code 3745-55-42, Ohio Adm.Code 3745-55-43, Ohio Adm.Code 3745-55-47, and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief under R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to \$10,000 per day for each day of each violation, including each day subsequent to the filing of this Complaint, under R.C. 3734.13(C).

COUNT SIX

Defendants failed to maintain adequate financial assurance for closure of the Fairwood Avenue and/or Watkins Road Sites.

55. The owner or operator of a hazardous waste facility must maintain financial assurance for closure of a facility and adjust the amount of financial assurance as necessary to account for inflation and other changes in the cost estimate for closure, as required by Ohio Adm.Code 3745-55-43.

56. From at least January 1, 2015 and continuing to the present, Defendants failed to maintain financial assurance for closure of the Fairwood Avenue Site and/or Watkins Road Site

and to adjust financial assurance as necessary to account for inflation and other changes in the cost estimate for closure.

57. The conduct or omissions of Defendants as described in this Count violate Ohio Adm.Code 3745-55-43, and R.C. 3734.11, for which Defendants are jointly and severally liable for entitled to injunctive relief under R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to \$10,000 per day for each day of each violation, including each day subsequent to the filing of this Complaint, under R.C. 3734.13(C).

COUNT SEVEN
Defendants unlawfully failed to maintain liability coverage for
the Fairwood Avenue Site and/or the Watkins Road Site.

58. The owner or operator of a hazardous waste facility must establish hazardous waste liability coverage, as required by Ohio Adm.Code 3745-55-47.

59. From at least January 1, 2015 and continuing to the present, Defendants failed to establish liability coverage for the Fairwood Avenue Site and/or the Watkins Road Site.

60. The conduct or omissions of Defendants as described in this Count violate Ohio Adm.Code 3745-55-47, and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief under R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to \$10,000 per day for each day of each violation, including each day subsequent to the filing of this Complaint, under R.C. 3734.13(C).

COUNT EIGHT
Defendants stored hazardous waste
in containers that were not in good condition.

61. Ohio Adm.Code 3745-55-71 requires the owner or operator of a hazardous waste facility to transfer hazardous waste from a container that is not in good condition to a container

that is in good condition.

62. From January 1, 2015 and continuing to the present, Defendants failed to transfer CRT glass hazardous waste from containers that were not in good condition to containers in good condition.

63. The conduct or omissions of Defendants as described in this Count violate Ohio Adm.Code 3745-55-71 and R.C. 3734.11, for which Defendants are jointly and severally liable for injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendants are jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, pursuant to R.C. 3734.13(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

- A. Preliminarily and permanently enjoin Defendants to comply with R.C. Chapter 3734 and the rules adopted thereunder, including but not limited to:
 - i. Prohibit Defendants from violating any provision of Ohio’s hazardous waste laws R.C. Chapter 3734 and the rules adopted thereunder;
 - ii. Prohibit Defendants from transporting, storing, treating, and/or disposing of any additional waste, as defined in Ohio Adm.Code 3745-51-02, at the Fairwood Avenue Site and the Watkins Road Site;
 - iii. Order Garrison to submit to Ohio EPA an approvable closure plan for the Watkins Road Site and to implement the closure plan, including removal of hazardous waste, as approved by Ohio EPA in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20;
 - iv. Order Olymbec to submit to Ohio EPA an approvable closure plan for the Fairwood

Avenue Site and to implement the closure plan, including removal of the hazardous waste, for the Site as approved by Ohio EPA in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20;

- v. Order Garrison and Olymbec to establish liability coverage in accordance with Ohio Adm.Code 3745-55-47; and
- vi. Order Garrison and Olymbec to comply with the closure cost estimate and financial assurance requirements including any annual updates in accordance with Ohio Adm.Code 3745-55-41 through 3745-55-43.

B. Order each Defendant, jointly and severally, pursuant to R.C. 3734.13(C), to pay into the State Treasury, to the credit of the hazardous waste clean-up fund, a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation including each day of violation after the filing of this Complaint, as alleged in Counts One through Eight.

C. Order the Defendants, jointly and severally, to pay all costs and fees for this action, including reasonable attorney fees and other litigation costs assessed by the Office of the Ohio Attorney General.

D. Retain jurisdiction of this suit for the purpose of making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendants' compliance with, and to carry out, this Court's judgment.

E. Award such other relief as this Court deems just and proper.

Respectfully submitted,

Dave Yost
Ohio Attorney General

/s/ Ian F. Gaunt
Ian F. Gaunt (0097461) *Trial Attorney*
Karrie P. Kunkel (0089755)
Assistant Attorneys General
Environmental Enforcement Section
30 E Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Ian.Gaunt@OhioAGO.gov
Karrie.Kunkel@OhioAGO.gov

Counsel for Plaintiff, State of Ohio

Exhibit A

Ohio Secretary of State's Cancellation for Failure to Maintain Statutory Agent

DATE 9/28/2016 TRANSACTION DESCRIPTION Canceled, Failure to Maintain Agent (FXA), Cancellation Notice Served (CLT)

Mail To:

201627210523
Closed Loop Refining and Recovery, Inc.
David Matthews
435 59th Ave., Ste 130
Phoenix, AZ 85043

cut along dotted line



The State of Ohio
Certificate
Secretary of State - John Husted

2129091

It is hereby certified that the Secretary of State of Ohio has custody of the business records for CLOSED LOOP REFINING AND RECOVERY, INC. and that said business records show the recording of:

CANCELLATION
FAILURE TO MAINTAIN AGENT

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the Secretary
of State at Columbus, Ohio, this 28th day of
September A.D. 2016



Handwritten signature of Jon Husted

Jon Husted
Secretary of State

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel. DAVE YOST,
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30 East Broad Street, 25th Floor
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OLYMBEC USA LLC
c/o CT Corporation System, statutory agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219,

Defendants.

Case No.

Hon.:

Praecipe for Service

In accordance with Civil Rules 4.1 and 4.2, please issue a summons and cause a copy of the State's Complaint against Defendants to be served by certified mail, return receipt requested, at the following address:

CLOSED LOOP REFINING AND RECOVERY, INC.
c/o Brent Benham,
3033 North Central, Suite 810
Phoenix, Arizona 85012

and

CLOSED LOOP GLASS SOLUTIONS, LLC
c/o NRAI, statutory agent,
1300 E. 9th Street,
Cleveland, Ohio 44144

and

GARRISON SOUTHFIELD PARK, LLC
c/o Corporation Service Company,
statutory agent
3366 Riverside Drive, Suite 103
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and

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Respectfully submitted,

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Ohio Attorney General

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