

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

STATE OF OHIO, ex rel. DAVE YOST,	:	
OHIO ATTORNEY GENERAL,	:	
Plaintiff,	:	Case No. 23 CVH-10-7472
v.	:	Judge: Noble
CLOSED LOOP REFINING AND RECOVERY, INC., et al.,	:	Magistrate: Saken
Defendants.	:	

**MAGISTRATE'S DECISION
FOLLOWING DAMAGES HEARING**

SAKEN, MAGISTRATE

Pursuant to Civ.R. 53 and Loc.R. 99.02, this case was referred to the undersigned Magistrate for a damages hearing.

The hearing took place on September 17, 2024, and was recorded electronically through the Court's FTR system in Courtroom 4D.

Attorneys Ian Gaunt and Karrie Kunkel appeared on behalf of Plaintiff State of Ohio, ex rel. Dave Yost, Ohio Attorney General ("Plaintiff"). They were accompanied by Peter Maneff and Mitchell Mathews, who testified in support of the requested damages. No one appeared on behalf of Defendants Closed Loop Refining and Recovery, Inc., Closed Loop Glass Solutions, LLC, Olymbec USA, LLC, and Garrison Southfield Park, LLC.

Plaintiff offered into evidence Exhibits A and B, which were admitted. Counsel were instructed to e-file the hearing exhibits within one week of the hearing date.

FINDINGS OF FACT

The Magistrate has considered the credibility of the witnesses. The Magistrate's opinion concerning the credibility of the witnesses is based on the appearance of the witnesses upon the stand, their manner of testifying, the reasonableness of the testimony, the opportunities the witnesses had to see, hear and know the things concerning which they testified, the witnesses' accuracy of memory, frankness or lack thereof, as well as intelligence, interest and bias (if any), together with all of the facts and circumstances surrounding the testimony.

Having considered the testimony and evidence presented, and having weighed the credibility thereof, the Magistrate finds as follows:

1. Plaintiff commenced this civil enforcement action against Defendants Closed Loop Refining and Recovery, Inc., Closed Loop Glass Solutions, LLC, Olymbec USA, LLC, and Garrison Southfield Park, LLC (collectively "Defendants") on October 19, 2023. In addition to requesting injunctive relief enjoining and prohibiting Defendants from further violating Ohio's hazardous waste laws in Revised Code Chapter 3734 and O.A.C. §3745-51-02, Plaintiff also requested civil penalties against Defendants.

2. After Defendants were served with summons and a copy of Plaintiff's Complaint, and after they failed to answer the same, Plaintiff moved for default judgment

3. The Court granted Plaintiff's motion for default judgment on June 11, 2024, and referred the case to the undersigned Magistrate for a civil penalty damages hearing as it relates to Defendants Closed Loop Refining and Recovery, Inc. and Closed Lopp Glass Solutions, LLC (collectively "the Closed Loop Defendants").

4. Peter Maneff testified during the hearing in support of the requested civil penalty damages. He has been employed by the Ohio EPA for 24 years, most recently as an environmental

supervisor, managing the hazardous waste program. In that role, he reviews inspections, permits and complaints. Prior to this role, Maneff worked as an environmental specialist at the Ohio EPA, performing compliance inspections throughout Ohio.

5. Over the course of his employment, Maneff has inspected over 20 of Ohio's largest hazardous waste facility generators and has conducted over 1,000 inspections. He is responsible for the EPA records for the facilities that he inspects, including the facilities at issue in this case. Those facilities are located on Watkins Road and on Fairwood Avenue, which are south of Columbus, located in a mixed-use warehouse and residential area.

6. The Closed Loop Defendants are in the business of collecting and recycling cathode ray tubes ("CRT"). Maneff explained that CRT is considered a hazardous waste unless it is being recycled. CRT is 15% lead by weight and is regulated by Ohio unless it is going into the recycling process, in which case it is exempt from permit requirements. Maneff further explained that lead is a neurotoxin; it is harmful to babies, affecting their development, and it increases the risk of cancer.

7. Maneff first came into contact with the Closed Loop Defendants in early 2011 on a complaint investigation. After that initial encounter, Maneff performed inspections of the Closed Loop Defendants' facilities every year until 2016.

8. Although the Closed Loop Defendants operated out of two locations, Maneff explained it is actually three facilities, two located on Watkins Road (1655 Watkins and 1675 Watkins) and another facility located at 2200 Fairwood Avenue. The 1675 Watkins Road facility is the largest facility, about the size of two-and-a-half football fields, while the 1655 Watkins and the Fairwood Avenue facilities are about half of the size of 1675 Watkins. In total, the three facilities cover an area equivalent to about four to five football fields.

9. The Closed Loop Defendants did not have a hazardous waste permit for the facilities. Maneff explained that they are not required to have such a permit as long as they are only recycling the CRT.

10. In 2016, Maneff performed a site assessment at the facilities because the property owners were trying to evict the Closed Loop Defendants for not paying rent. When he arrived, he saw “a sea of CRT monitors” stacked floor to ceiling. He explained that a Gaylord is a four-foot-by-four-foot cardboard box and there were Gaylords all over the place, stacked one on top of another, up to four or five units high. According to Maneff, that was the most hazardous waste he has seen in any one place in his 24 years at the Ohio EPA. In addition, two loads of semitrucks with CRT arrived at the facility the day of his site visit.

11. Maneff identified Exhibit A as a copy of the Notice of Violations Letter that he wrote to the Closed Loop Defendants. The letter is dated April 11, 2016, and is addressed to Brent Benham, who is CEO/CFO of both entities.

12. According to the letter, the recycling process at the Fairwood Avenue facility ceased as of the summer of 2015, “when the recycling operations broke.” Therefore, Maneff testified, the facility could no longer be exempted from the permit requirements since CRT materials were now accumulating at this location instead of the materials being recycled there. This, in turn, caused a chain reaction that affected the Watkins Road facilities, since “processed glass was being shipped from the Watkins Road Facility to Fairwood Avenue Facility for further recycling.” (Letter, at 1.) However, because the “receiving facility for processed CRT glass,” i.e., the Fairwood Avenue facility, “did not have a feasible means of recycling,” then the processed CRT glass at the Watkins Road location was also no longer excluded from the hazardous waste permitting requirements. (Id., at 2.)

13. Maneff explained that the Closed Loop Defendants are connected since the same employees and principals operate both facilities/locations. Therefore, both Closed Loop Defendants were cited for violating R.C. §3734.02(E) and (F) at the Watkins Road location since, once they were no longer excluded from Ohio's hazardous waste permitting requirements, they could no longer store or transport CRT materials without a permit (first and second citations).

14. As it relates to the Watkins Road location, the Closed Loop Defendants were also cited for: a.) not labeling the hazardous waste in accordance with O.A.C. §3745-52-34(C)(1)(b) (third citation); b.) not dating the hazardous waste containers in accordance with O.A.C. §3745-52-34(D)(2) (fourth citation); and c.) failing to store the hazardous waste materials in proper containers in accordance with O.A.C. §3745-66-71 since many of the Gaylords and other containers were deteriorating (fifth citation).

15. As it relates to the Fairwood Avenue location, the Closed Loop Defendants were cited for violating R.C. §3734.02(E) and (F). Again, if the facility is no longer transporting the CRT materials to an actively recycling location, then it is impermissibly storing the CRT materials without a permit.

16. Maneff took the photographs attached to the violation letter in Exhibit A. Those photographs show the existence of phosphor powder (photo 20) and lead dust at the Watkins Road facility. He explained that the facility has a breaker room where CRT glass is broken down and separated into non-lead glass and lead glass. However, because the breaker equipment was broken, all of the glass was mixed, so all of the material was hazardous. The photographs also depict saw lead dust throughout the facility as a result of the bag house not functioning well.

17. According to Maneff, the Fairwood Avenue location also washed the broken lead glass in an acid wash to prepare it for shipping to India or Spain, but the washing equipment was

broken. He witnessed during the site visit that both locations were no longer able to function as they should, and the facilities were incapable of doing what they were required to do to qualify as recycling facilities.

18. The Closed Loop Defendants were required to clean up the area and dispose of the hazardous waste, but they did not do that. Maneff conducted multiple follow-up inspections at both facilities in 2016, and approximately 90% of the facilities were full of CRT materials. Although Maneff did not know when exactly the Closed Loop Defendants left, during one of the follow-up visits he found the Watkins Road facility unlocked, not secured and abandoned, with no one there. The Fairwood Avenue location was also locked and abandoned, so he could not gain access and had to have the premises owner let him in. He again witnessed saw lead dust throughout both locations.

19. Maneff testified about the threat of harm posed by the hazardous waste, both in general, and also because the Watkins facilities were left unlocked and not secured, where anyone could walk away with hazardous waste and further spread it around.

20. According to Maneff, once it was obvious that the Closed Loop Defendants were not going to do anything to remedy this situation, the property owners cleaned up the facilities at both locations. Maneff was involved in the clean-up process through his review of the closure plans, his approval of the invoices and closure certificates, and his monthly site visits.

21. He explained that over 150 million pounds of CRT glass, debris and dust was left behind, and all of it had to be removed. In addition, the facilities had to be washed from floor to ceiling, including the HVAC systems, with a special triple-rinse to ensure all hazardous materials were removed and cleaned up. The clean-up process and closure of the facilities took about 3.5 years to complete. In the end, the property owners paid about \$17 million for the clean-up.

22. Maneff, who reviewed and approved the closures for all three facilities, identified Exhibit B as consisting of excerpts from the final closure reports for the facilities. He explained that the initial clean-up started in 2020, and the final clean-up approval was issued in 2023. The Closed Loop Defendants were not involved in the clean-up at all.

23. Exhibit B includes: a.) a Final Closure Report for 1655 Watkins Road that is dated March 2021, with an estimated closure cost of \$1,964,647 as of February 2021; b.) a Final Closure Report for 2200 Fairwood Avenue dated August 2021, with a closure cost of \$4,060,940 based on invoices received as of July 31, 2021, and anticipating additional contractor invoices to be submitted thereafter; and c.) a Final Closure Report for 1675 Watkins Road dated November 8, 2022, with an estimated closure cost of \$11,214,268 based on invoices received as of August 31, 2022, and anticipating additional invoices from HEPA-ES and EnSafe for work completed beyond the invoicing period. It is apparent from these reports that the clean-up work continued past November 8, 2022. According to Maneff, the final clean-up approval was issued sometime in 2023.

24. Mitchell Mathews also testified in support of the requested sanctions and damages. He has been employed at the Ohio EPA for about 29 years, serving the past 8-9 years as manager of the compliance assurance section of the hazardous waste program. In that role, he oversees inspections and financial assurances, and is involved in rule adoption and policy guidance.

25. Mathews started out as a hazardous waste inspector, performing site inspections at hazardous waste facilities. He then became an inspection auditor/compliance assistant, then worked in a lead capacity in that role, and then became a manager. As an inspection auditor, Mathews oversaw how the inspectors were implementing the hazardous waste program to make sure there was consistency across the board.

26. Defendant Garrison Southfield Park, LLC is the owner of the Watkins Road facility and Defendant Olymbec USA, LLC is the owner of the Fairwood Avenue facility. Mathews explained that the owner-defendants approached the Ohio EPA to discuss how to recycle CRT without the need for permits. The Ohio permitting exclusions were explained to them, along with the conditions to be met. According to Mathews, the Ohio EPA was in constant communication and oversight with the defendants when they were in the initial start-up phases. The facilities were then inspected regularly to ensure the exclusion conditions were still being met.

27. In early 2016, the Ohio EPA started to hear that recycling operations were no longer taking place at the Watkins Road and Fairwood Avenue facilities. A site visit confirmed that to be true and resulted in notifications to the Defendants regarding the violations.

28. Mathews explained that the Ohio EPA usually reaches out to operators to get them to comply with the requirements and cure any violations. However, due to the egregiousness of the violations in this case and the lack of cooperation from the Defendants, the matter was referred to the Ohio Attorney General's office. As a result of the referral, both the defendant-operators and the defendant-owners were held liable, which is typical.

29. Mathews' testimony centered primarily on the economic benefit that the Closed Loop Defendants obtained in operating the facilities without first obtaining a permit. Mathews testified that the three facilities were never permitted and the cost of obtaining a permit for each would have been significant.

30. He explained the permitting process, noting that one would first need to obtain an environmental background check and the cost of that check alone is approximately \$25,000. One would then need to demonstrate that the facility can be sited at that specific location. Mathews explained that Part A of the permit application, which relates to the logistics of the operation, and

includes site photographs and maps, is filed first. After Part A is approved, one would then submit Part B of the application, which is “the meat of the application.”

31. Mathews explained that Part B of the application consists of information related to how the facilities would work, and includes detailed plans, processes and procedures, including emergency procedures and contingency plans if there is an emergency. This portion of the application also includes procedures on how the hazardous waste will be managed, and includes architectural and engineering designs to show the facility is capable of hazardous waste management. In addition, Part B would include information about personnel training on proper procedures, and a closure plan that would explain how the hazardous waste will be removed at the end of operations, and how the location and facility will be decontaminated. Mathews explained that this portion of the application needs to include a cost estimate for the closure, and the cost estimate is to presume a worst-case scenario for closure purposes. Furthermore, this portion of the application needs to provide financial assurance for the closure amount, and a corrective action module that describes how to clean up other units that would not be involved with hazardous waste but that might be impacted by the waste nonetheless.

32. Mathews explained that since the clean-up cost in this case was \$17,000,000, the Closed Loop Defendants would have had to show financial assurance for that amount through the permit application process. He explained that, for financial assurance purposes, applicants usually set up a trust with the estimated cost of closure being deposited into an account. However, none of the foregoing was completed by the Closed Loop Defendants.

33. Mathews testified that just to develop the plans and processes, the Closed Loop Defendants would have had to hire consultants, who usually charge hundreds of thousands of dollars just for that component of the application requirements. Mathews estimated it would cost

approximately \$10,000,000 to make sure all requirements of the application have been satisfied and all information has been provided, plus to get financial assurances for the closure/worst-case scenario clean-up estimates.

34. Mathews also testified about the extraordinary costs incurred by the State related to enforcement. He explained that the Ohio EPA has spent eight years working on this matter, alongside the Attorney General's office, from the initial monitoring, up until the oversight of the closure and clean-up process. He explained that the Ohio EPA tried to resolve this with the Closed Loop Defendants before getting the Attorney General involved and tried to get them to restart recycling but received no response from the Defendants.

35. According to Mathews, less than 1% of EPA cases rise to this level of cost and involvement as it relates to enforcement. Based on his calculations, the Defendants were in violation of Ohio laws for approximately 12,500 days.

36. During closing arguments, Plaintiff's counsel requested civil damages of at least \$3,000,000.

CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Magistrate concludes as follows:

1. Through the Court's grant of default judgment, it has been established that the Closed Loop Defendants are liable to Plaintiff for damages related to the claims asserted against them. Furthermore, in light of Civ.R. 8(D), “[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.”

2. Having failed to appear at the civil penalty damages hearing, the Closed Loop Defendants have lost the opportunity to rebut any of the evidence presented by Plaintiff with respect to the amount of damages requested.

3. The Court has already permanently enjoined the Closed Loop Defendants, ordering them to comply with R.C. Chapter 3734 and the rules adopted under that Chapter, including but not limited to: a.) refrain from violating any provision of Ohio's hazardous waste laws in R.C. Chapter 3734 and the rules adopted thereunder; and b.) refrain from transporting, storing, treating, and/or disposing of any additional waste, as defined in O.A.C. §3745-51-02, at 2200 Fairwood Avenue, Columbus, Ohio, 43207, at 1655 Watkins Road, Columbus, Ohio 43207, and at 1675 Watkins Road, Columbus, Ohio 43207.

4. In addition, Plaintiff has requested that the Court impose a civil penalty against the Closed Loop Defendants as authorized by R.C. §3734.13(C).

5. R.C. §3734.13(C) provides, in pertinent part, as follows:

(C) If the director determines that any person is violating or has violated this chapter, a rule adopted thereunder, or a term or condition of a permit, license, variance, or order issued thereunder, *the director may request in writing that the attorney general bring a civil action for appropriate relief*, including a temporary restraining order, preliminary or permanent injunction, *and civil penalties* in any court of competent jurisdiction. *** Except as otherwise provided in this division with regard to a violation of the provisions of this chapter governing scrap tires *** the court may impose upon the person a civil penalty of not more than ten thousand dollars for each day of each violation of this chapter other than a violation of section 3734.60 of the Revised Code, sections 3734.62 to 3734.65 of the Revised Code, sections 3734.90 to 3734.9013 of the Revised Code or a rule adopted under those sections, or division (B) of section 3734.912 or section 3734.914 of the Revised Code; of a rule adopted under this chapter other than a rule adopted under division (B) of section 3734.122 of the Revised Code; or of a term or condition of a permit, license, variance, or order issued under this chapter. ***

6. It is well established that “[c]ivil penalties can be used as a tool to implement a regulatory program. *** Substantial penalties are recognized as a mechanism for deterring conduct

which is contrary to a regulatory scheme.” *State ex rel. Brown v. Howard*, 3 Ohio App.3d 189, 191 (10th Dist. 1981), citing *United States, ex rel. Marcus, v. Hess*, 317 U.S. 537 (1943), *United States v. ITT Continental Baking Co.*, 420 U.S. 223 (1975), and *State, ex rel. Brown v. Dayton Malleable, Inc.*, 1981 Ohio App. LEXIS 12103 (2nd Dist. April 21, 1981).

7. As the Ohio Supreme Court has recognized, “the amount of a civil penalty imposed for a violation of pollution-control policies lies within the discretion of the trial court.” *State ex rel. Ohio AG v. Shelly Holding Co.*, 2012-Ohio-5700, ¶23, citing *State ex rel. Brown v. Dayton Malleable*, 1 Ohio St.3d 151, 157-158 (1982).

8. Pursuant to *State ex rel. Brown v. Dayton Malleable, Inc.*, 1 Ohio St.3d 151 (1982), the Court may use its informed discretion to impose a civil penalty that is appropriate to: a.) redress the harm or risk of harm posed to public health or the environment by the violations at issue; b.) remove the economic benefit gained by the violations; c.) penalize the level of recalcitrance, defiance, or indifference demonstrated by the violator of the law; and d.) recover the extraordinary costs incurred by the State of Ohio.

9. Plaintiff has established through the evidence and testimony presented during the civil penalty evidentiary hearing that the Closed Loop Defendants’ careless and reckless conduct posed a significant risk of harm to the public health and to the environment surrounding the three facilities. Specifically, the Closed Loop Defendants caused over 150 million pounds of CRT to accumulate in a mixed-use warehouse and residential area. CRT is a hazardous waste due to its lead content and lead exhibits characteristics of toxicity as defined in O.A.C. §3745-51-24. Lead is a known neurotoxin that is especially harmful to babies and small children, and is linked to an increase in cancer. Not only were the facilities full of CRT materials, but they were also covered in phosphor powder and saw lead dust. In addition, when the Closed Loop Defendants abandoned the premises,

they left the Watkins Road facilities unlocked and unsecured, making it extremely easy for anyone to enter and then remove and further spread the harmful CRT to areas beyond the facilities' perimeter.

10. Plaintiff further established the Closed Loop Defendants were recalcitrant and indifferent to the harm they caused. They failed to respond to the initial attempts by the Ohio EPA to get them to restart recycling operations and avoid litigation, and they took no role whatsoever in the years-long and costly clean-up that followed. During that clean-up process, which cost the premises owners approximately \$17,000,000, the facilities had to be washed from floor to ceiling with a special triple-rinse to make sure all hazardous materials were cleaned up.

11. The Closed Loop Defendants also benefitted economically by operating the facilities without a permit. In addition to not pay anything towards the astronomical clean-up costs that were necessitated by their own conduct, the Closed Loop Defendants benefitted to the tune of approximately \$10,000,000 by not having had to apply for a permit to operate the facilities. Hiring consultants to provide the detailed operational and contingency plans required during the permit application process, and providing financial assurances for a worst-case scenario clean-up situation, much like the one that unfolded here, would have cost the Closed Loop Defendants about \$10 million.

12. Finally, Plaintiff presented uncontested evidence and testimony related to the extensive costs to the State in enforcing its hazardous waste laws, starting with its initial attempts to resolve this matter directly with the Defendants, all the way up to having to oversee the closure and clean-up process, and then engaging in litigation.

13. Having considered the four factors articulated in *State ex rel. Brown v. Dayton Malleable, Inc.*, along with the evidence submitted by Plaintiff, including the affidavit and live testimony provided, and the arguments set forth in Plaintiff's Civil Penalty Brief, the Court finds

the civil penalty requested by Plaintiff related to the Closed Loop Defendants' violations of Ohio's hazardous waste laws and rules is warranted and should be granted.

14. The uncontested evidence and testimony established that the at-issue violations were in place for a very long time. As of the summer of 2015, the recycling operations broke down at the Fairwood Avenue facility, which impacted the Watkins Road facilities. Even if the Court were to use the April 11, 2016 notice letters to the Closed Loop Defendants' CEO Brent Benham as the starting point of the violations, it is uncontested that the hazardous waste clean-up work continued past November 8, 2022. That time period alone (April 11, 2016 to November 8, 2022) yields 2,398¹ days of violations which, according to the \$10,000 per day civil penalty provided for in R.C. §3734.13(C), would yield a maximum civil penalty of \$23,980,000.

15. Plaintiff, instead, has requested a civil penalty of \$3,000,000. The Magistrate finds that amount to be quite reasonable and, under the circumstances, most definitely warranted.

DECISION

In light of the foregoing, the Magistrate recommends that the Court order Defendant Closed Loop Refining and Recovery, Inc. and Defendant Closed Loop Glass Solutions, LLC, jointly and severally, to pay to the State a civil penalty of \$3,000,000 pursuant to R.C. §3734.13(C) and within 30 days of the Court's entry of judgment.

Said civil penalty shall be paid via cashier's or certified check, made payable to "Treasurer, State of Ohio," and delivered to Hannah Smith, or her successor, at 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

¹ 260 days in 2016 + 365 days in 2017 + 365 days in 2018 + 365 days in 2019 + 366 days in 2020 (leap year) + 365 days in 2021 + 312 days in 2022 = 2,398 days

Pursuant to Loc. R. 25.01, counsel for Plaintiff shall promptly prepare and submit to the assigned Judge an appropriate judgment entry adopting this Magistrate's Decision.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV.R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV.R. 53(D)(3)(b).

IT IS SO ORDERED.

Copies to:

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Franklin County Court of Common Pleas

Date: 01-24-2025

Case Title: STATE OF OHIO EX REL DAVE YOST ATTY GENE -VS-
CLOSED LOOP REFINING AND RECOVERY INC ET AL

Case Number: 23CV007472

Type: MAGISTRATE DECISION

So Ordered

The seal of the Franklin County Common Pleas Court is a circular emblem. The outer ring contains the text "FRANKLIN COUNTY OHIO" at the top and "COMMON PLEAS COURT" at the bottom. The inner circle features a central figure, possibly a scales of justice, surrounded by the words "ALL THINGS POSSIBLE" and "NOTHING IMPOSSIBLE". A handwritten signature "Elizabeth P. Saken" is written over the seal.

/s/ Magistrate Elizabeth P. Saken