

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GARRISON SOUTHFIELD PARK LLC,

Plaintiff,

v.

CLOSED LOOP REFINING AND
RECOVERY, INC., et al.,

Defendants.

Case No. 2:17-cv-783-EAS-EPD

CHIEF JUDGE EDMUND A.
SARGUS, JR.

Magistrate Judge Elizabeth Preston
Deavers

OLYMBEC USA LLC,

Plaintiff,

v.

CLOSED LOOP REFINING AND
RECOVERY, INC., et al.,

Defendants.

Case No. 2:19-cv-1041-EAS-EPD

CHIEF JUDGE EDMUND A.
SARGUS, JR.

Magistrate Judge Elizabeth Preston
Deavers

**NOTICE OF PROPOSED CONSENT DECREE BETWEEN GARRISON SOUTHFIELD
PARK LLC, OLYMBEC USA LLC, AND FEDERAL PRISON INDUSTRIES, INC.**

Defendant Federal Prison Industries, Inc., d/b/a UNICOR, Plaintiff Olymbec USA LLC, and Plaintiff Garrison Southfield Park LLC (collectively the “Parties”) hereby provide notice to the Court that they have agreed to a proposed Consent Decree in the above captioned cases, which is attached hereto. The Parties anticipate filing a motion to enter the proposed Consent Decree by Friday, December 6, 2019.

/s/ Phillip R. Dupré

Phillip R. Dupré

U.S. Department of Justice

Environment and Natural Resources
Division

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*Attorney for Defendant Federal Prison
Industries, Inc. d/b/a/ UNICOR*

CERTIFICATE OF SERVICE

I certify that on November 26, 2019, a copy of the foregoing Notice of Proposed Consent Decree was filed electronically with the Court's CM/ECF system, which will send notification to all attorneys registered to receive such service. Parties may access this filing through the Court's electronic filing system.

/s/ Phillip R. Dupré

Phillip R. Dupré
Counsel for UNICOR

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CHIEF JUDGE EDMUND A.
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CONSENT DECREE

WHEREAS, Garrison Southfield Park LLC (“GARRISON”), Olymbec USA LLC (“OLYMBEC”), and the United States of America, on behalf of its agency Federal Prison Industries, Inc. d/b/a UNICOR (“UNICOR”), have agreed to a settlement of the above-referenced actions filed by GARRISON and OLYMBEC against UNICOR in the U.S. District Court for the Southern District of Ohio (the “District”);

WHEREAS, GARRISON, OLYMBEC, and the United States are each referred to herein as a “Party” and are collectively referred to herein as the “Parties”;

WHEREAS, GARRISON is the owner of 1655 and 1675 Watkins Road, Columbus, Ohio 43207, and OLYMBEC is the owner of 2200 Fairwood Avenue, Columbus, Ohio 43207;

WHEREAS, Closed Loop Refining and Recovery, Inc. (“Closed Loop”) leased 1675 Watkins Road, Columbus, Ohio 43207 and space within 1655 Watkins Road, Columbus, Ohio 43207 (collectively, “Watkins Road”) from GARRISON; and Closed Loop leased space within 2200 Fairwood Avenue, Columbus, Ohio 43207 (“Fairwood Avenue”) from OLYMBEC (with all three properties collectively referred to herein as the “Facility”);

WHEREAS, at all times relevant, Closed Loop operated the Facility;

WHEREAS, GARRISON and OLYMBEC estimate that Closed Loop received and stockpiled approximately 80,000 tons of cathode ray tubes and other electronic waste at the Facility, before abandoning both Watkins Road and Fairwood Avenue in or around April 2016;

WHEREAS, GARRISON and OLYMBEC currently estimate the costs of environmental cleanup at the Facility at more than \$18 million;

WHEREAS, the Ohio Environmental Protection Agency (“Ohio EPA”) has referred the potential cleanup of the Facility for potential litigation to the Ohio Attorney General’s Office;

WHEREAS, GARRISON filed the Original Complaint and Amended Complaint, and OLYMBEC filed the Complaint, herein against UNICOR, alleging that UNICOR is a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, (“CERCLA”) in connection with the Facility as defined herein;

WHEREAS, GARRISON, OLYMBEC, and the United States agree that settlement of the Claims against the United States in this case is in the public interest, that settlement will avoid the costs and uncertainties of further litigation, and that entry of this Decree is the most appropriate means of resolving the Claims against the United States in this case;

WHEREAS, this Decree is intended to constitute a complete and final settlement of the Claims by GARRISON and OLYMBEC as set forth in the Original Complaint, Amended Complaint, and Complaint against the United States regarding the Facility; and

WHEREAS, the Court finds that this Decree is a reasonable and fair settlement of the Claims against the United States in this case and that this Decree adequately protects the public interest.

THEREFORE, before taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the Parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the Claims in the Amended Complaint and Complaint against UNICOR, pursuant to 28 U.S.C. § 1331 (Federal Question) and 42 U.S.C. §§ 9607 and 9613(b) (CERCLA). This Court has personal jurisdiction over the Parties.

2. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) (CERCLA) and 28 U.S.C. § 1391(b) and (c), because UNICOR conducts business in this District, the Facility is located in this District, the alleged releases and threatened releases of hazardous substances occurred in this District, and/or a substantial part of the events or omissions giving rise to the causes of action alleged in this matter occurred within this District.

II. PARTIES BOUND

3. The obligations of this Decree shall apply to and be binding upon the Parties, including their respective officers, agents, and employees, as well as the successors and assigns of GARRISON and OLYMBEC.

III. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Decree, the following definitions shall apply:

- a. “Original Complaint” shall mean the original complaint filed by GARRISON against UNICOR in Case No. 2:17-cv-783-EAS-EPD;
- b. “Amended Complaint” shall mean the amended complaint filed by GARRISON against UNICOR in Case No. 2:17-cv-783-EAS-EPD;
- c. “Complaint” shall mean the complaint filed by OLYMBEC against UNICOR in Case No. 2:19-cv-1041-EAS-EPD;
- d. “Claim” shall mean any civil lawsuit or administrative case, and any causes of action asserted or relief requested therein;
- e. “Effective Date” shall mean the date that this Decree is entered by the Court;
- f. “Response Action” shall mean any Removal Action or Remedial Action, as those terms are defined in Section 101(23) and (24) of CERCLA, 42 U.S.C. § 9601(23-24), conducted at or in connection with the Facility;

g. “Response Costs” shall mean all costs of “response” as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for response actions conducted at or in connection with the Facility, whether incurred by GARRISON, OLYMBEC, or any other person or entity; and

h. “United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

IV. SCOPE AND EFFECT OF CONSENT DECREE

5. This Decree was negotiated and executed by GARRISON, OLYMBEC, and the United States in good faith and at arm’s length and is a fair and equitable compromise of the Claims.

6. This Decree shall constitute a full and final resolution between GARRISON, OLYMBEC, and the United States with respect to the Claims asserted against UNICOR in the Original Complaint, Amended Complaint, and Complaint, in accordance with the terms and conditions of this Decree.

7. This Decree is not to be interpreted as an admission on the part of any Party of any issue of fact or law, or liability or wrongdoing, and it is expressly understood that no Party, by agreeing to this Decree, admits liability of any sort or any other issue of fact or law.

V. REIMBURSEMENT OF RESPONSE COSTS AND PRODUCTION OF RECORDS

8. As soon as reasonably practicable after the Effective Date, the United States, on behalf of UNICOR, will pay \$647,226.51 to GARRISON, which shall route the funds into escrow account(s) pursuant to escrow agreement(s) between Ohio EPA, GARRISON and/or OLYMBEC with such escrow agreement(s) specifying that the settlement payment will be dispersed from the escrow account(s) to pay necessary removal or remediation costs that Ohio EPA determines are

consistent with the U.S. Environmental Protection Agency National Contingency Plan in 40 C.F.R. Part 300 (“NCP”). Payment shall be made by Electronic Funds Transfer in accordance with instructions provided by GARRISON and OLYMBEC.

9. The payment amount in Paragraph 8 is based upon an estimate that UNICOR shipped 4,634,549 lbs of hazardous substances to the Facility, with such estimate prepared by GARRISON and OLYMBEC based on available Closed Loop records, and in keeping with reasonable inquiry conducted by the United States.

10. If such payment is not made in full within sixty (60) days after either the Effective Date of this Decree, or 60 days after the date upon which GARRISON and OLYMBEC provide the United States with payment instructions, whichever is later, then interest on the unpaid balance shall accrue on the 61st day after such later date. Interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the United States Code.

11. The payment by the United States in Paragraph 8 is subject to the availability of funds appropriated for such purpose. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42 and 1511-19, or any other applicable federal law.

12. UNICOR shall, within 60 days after entry of this Decree, forward to GARRISON and OLYMBEC all relevant and non-privileged records in UNICOR’s possession, custody or control as of that date, relating to the Facility. GARRISON and OLYMBEC agree to enter into confidentiality agreements, if appropriate, to protect information UNICOR deems to be a trade secret pursuant to Ohio Revised Code § 1333.61(D) or Ohio Administrative Code § 3745-49-03.

VI. RELEASE AND COVENANT NOT TO SUE

13. Upon and in consideration of the payment in Paragraph 8 of this Decree and the obligation in Paragraph 12 of this Decree, and except as otherwise specifically provided in this Decree, GARRISON and OLYMBEC release and covenant not to sue the United States and its officers or employees acting within the scope of their employment with respect to the Response Costs or Response Actions. This release and covenant apply to any Claims, including Claims for damages, that were asserted, could have been asserted, or could now be asserted with respect to the allegations against UNICOR contained in the Original Complaint, Amended Complaint, and Complaint. This release and covenant extend only to the United States and its officers or employees acting within the scope of their employment and do not extend to any other person or entity.

14. The United States, on behalf of UNICOR, hereby releases and covenants not to sue GARRISON and OLYMBEC with respect to the Response Costs or Response Actions. This release and covenant extend to the past and present directors, officers, members, shareholders, insurers, partners, agents, and employees of GARRISON and OLYMBEC; the successors, predecessors, assigns, parents, and subsidiaries of GARRISON and OLYMBEC; and the past and present directors, officers, members, shareholders, insurers, partners, agents, and employees of the successors, predecessors, assigns, parents, and subsidiaries of GARRISON and OLYMBEC.

15. Subject to the limitations set forth in Paragraph 16, the United States, on behalf of UNICOR, covenants (a) to not assert any Claim against any person or entity who is alleged to be a potentially responsible party for Response Costs at the Facility for Response Costs or Response Actions, and (b) to not object to any past or future agreements to settle Claims between and among GARRISON, OLYMBEC, and any person or entity that is not a party to this Decree,

including, without limitation, agreements that allocate Response Costs for the Facility to other persons or entities, provided that such agreements are submitted to the Southern District of Ohio or another federal district court for approval.

16. Notwithstanding the foregoing release and covenant not to sue, the United States specifically reserves its right to assert against GARRISON and OLYMBEC any Claims or actions regarding the Facility brought on behalf of the U.S. Environmental Protection Agency, any federal agency functioning in its capacity as a lead or cooperating agency under the NCP for the Facility, or a federal natural resource trustee. Notwithstanding any other provision of this Decree, the United States, on behalf of the U.S. Environmental Protection Agency and any other agency so authorized, also retains all authority and reserves all rights to take any and all response actions authorized by law at the Facility.

17. Notwithstanding any other provision in this Decree, GARRISON and OLYMBEC each reserve, and this Decree is without prejudice to, the right to institute proceedings against UNICOR in this action or in a new action to reimburse GARRISON and/or OLYMBEC for additional Response Costs, if information is discovered after the Effective Date that indicates that UNICOR contributed hazardous substances to the Facility in an amount greater than 5,134,549 lbs.

18. The mutual release and covenants not to sue set forth in Paragraphs 13 and 14 do not, however, extend to any actions to enforce or remedy an alleged breach of this Decree.

VII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

19. Upon its entry by the Court, this Decree shall have the force and effect of a final judgment. Any modification of this Decree shall be in writing and shall not take effect unless signed by the Parties and approved by the Court.

20. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person or entity not a party to this Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person or entity not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, Claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Facility against any person or entity not a party hereto.

21. The Parties agree that the United States, on behalf of UNICOR, is paying a fair share of Response Costs and all other costs and/or damages at the Facility.

22. The Parties agree, and by entering this Decree this Court finds, that this settlement constitutes a fair and reasonable settlement of Claims by GARRISON and OLYMBEC for Response Costs against UNICOR at the Facility, and that the United States, on behalf of UNICOR, is entitled, as of the Effective Date, to protection from contribution actions or Claims as provided by CERCLA Section 113(f)(1), 42 U.S.C. § 9613(f)(1), or as may be otherwise provided by law, for the Matters Addressed in this Decree. "Matters Addressed" in this Decree means all Response Costs.

23. The Parties agree to join in and/or support, as may be appropriate, such legal proceedings as necessary to secure the Court's approval and entry of this Decree and to secure and maintain the contribution protection contemplated in this Decree. Nothing in this Decree is intended to be construed to mean that GARRISON or OLYMBEC would provide indemnification to the United States in the event of a Claim for contribution.

24. In furtherance of Paragraph 16, the Parties agree that nothing set forth in this Decree resolves any liability on the part of GARRISON or OLYMBEC to the United States for

purposes of Section § 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2-3), for any or all Response Actions conducted at or in connection with the Facility or for any or all Response Costs for Response Actions conducted at or in connection with the Facility, whether incurred by GARRISON, OLYMBEC, UNICOR, or any other person or entity.

VIII. OTHER CLAIMS

25. This Decree does not extend to or inure to the benefit of any person or entity other than GARRISON, OLYMBEC, and the United States and their officers or employees acting within the scope of their employment, and nothing in this Decree shall be construed to make any other person or entity a third-party beneficiary of this Decree.

26. Subject to the limitations set forth herein, nothing in this Decree is intended to be, nor shall be construed as, a waiver, release, or covenant not to sue for any Claim or cause of action, administrative or judicial, in law or in equity, which a Party may have against any person, firm, partnership, trust, corporation or any other entity that is not a party to this Decree.

IX. DISPUTE RESOLUTION

27. Any dispute that arises with respect to the meaning or requirements of this Decree shall be, in the first instance, the subject of informal negotiations between the Parties affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one Party to the other affected Party or Parties that a dispute exists, unless agreed to in writing by those Parties. If a dispute between the Parties cannot be resolved by informal negotiations, then, within fourteen (14) days after the end of the informal negotiations period, any Party may file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution.

X. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree.

30. This Decree shall be interpreted in accordance with federal law.

XI. COSTS OF SUIT

31. Each Party to this Decree shall bear its own costs and attorneys' fees in this action.

XII. SIGNATORIES/SERVICE

32. Each of the undersigned certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

33. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis.


IT IS SO ORDERED.

Dated and entered this _____ day of _____ 2019.

United States District Judge

ON BEHALF OF GARRISON

By:



Signature / Position */Vice President*

Matthew J. Lambert

Printed Name

11/19/2019

Date

ON BEHALF OF OLYMBEC

By:

Signature / Position

Printed Name

Date

ON BEHALF OF GARRISON

By:

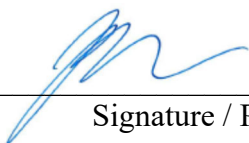
Signature / Position

Printed Name

Date

ON BEHALF OF OLYMBEC

By:

 EVP Operations and General Counsel

Signature / Position

Jason Berger

Printed Name

11/18/2019

Date

ON BEHALF OF THE UNITED STATES:

Assistant Attorney General
Environment and Natural Resources Division



Phillip R. Dupré
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Dated: Nov. 26, 2019