

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Imthurn Drum Site
585 The Bend Road
Ney, Ohio

**Director's Final
Findings and Orders**



Campbell Soup Company
World Headquarters
1 Campbell Place
Camden, NJ 08103-1799

and

Campbell Soup Supply Company L.L.C.
12-773 State Route 110
Napoleon, OH 43545

OHIO E.P.A.
OCT 16 2001
ENTERED DIRECTOR'S JOURNAL

Respondents

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These director's Final Findings and Orders (Orders) are issued to Campbell Soup Company and Campbell Soup Supply Company, L.L.C. (Respondents) pursuant to the authority vested in the director of the Ohio Environmental Protection Agency (Ohio EPA) under §§ 3734.13, 3734.16, and 3745.01 of the Ohio Revised Code (ORC).

II. PARTIES BOUND

These Orders shall apply to and be binding upon the Respondents, their assigns and successors in interest. No changes in ownership relating to the Napoleon Facility or the Imthurn Facility will in any way alter the Respondents' responsibilities under

these Orders. The Respondents' obligations under these Orders may be altered only by the written approval of the director of Ohio EPA.

III. DEFINITIONS

1. Unless otherwise stated, all terms in these Orders shall have the same meaning as used in Chapter 3734. of the ORC and the regulations promulgated thereunder.
2. The effective date of these Orders is the date these Orders are entered into the Ohio EPA director's journal.

IV. FINDINGS OF FACT

By entering into these Orders or by acting (or failing to act) in connection with these Orders and any approved plan, Respondents do not admit the Findings of Fact set forth below, any of the allegations contained in these Orders, any issues of law or fact or any responsibility for the violations of statute or rule alleged, or any release or threat of release of hazardous waste into the environment, and these Findings of Fact in and of themselves, do not constitute evidence against Respondents. The director of Ohio EPA has determined the following findings of fact:

1. Respondents own and operate a food production plant located at 12-773 State Route 110, Napoleon, Henry County, Ohio (Napoleon Facility). At the Napoleon Facility, Respondents produce heat processed food products including soups and several types of vegetable juices. Respondents manufactured cans at the Napoleon Facility until June, 1998.
2. Each Respondent is a "person" as defined in § 3734.01(G) of the ORC and Ohio Administrative Code (OAC) rule 3745-50-10(A). Respondent Campbell Soup Company, is a New Jersey corporation. Respondent Campbell Soup Supply Company L.L.C. is a Delaware limited liability corporation, a subsidiary of Campbell Soup Company, and was last registered to conduct business in the State of Ohio on July 26, 1999.
3. At the Napoleon Facility, Respondent Campbell Soup Supply Company L.L.C. is currently a small quantity generator of "hazardous waste" as that term is defined in ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03.
4. Respondent Campbell Soup Company notified the United States Environmental

Protection Agency (U.S. EPA) of its hazardous waste activity at the Napoleon Facility and was issued U.S. EPA Identification Number OHD 005 419 171 on August 2, 1980.

5. The Imthurn Drum Site, d.b.a. County Line Auto Parts, is located at 585 The Bend Road, in Ney, Defiance County, Ohio. (Imthurn Facility). The Imthurn Facility was, during events relevant to these Orders, owned and operated by Ellis A. Imthurn.
6. Based on investigations of the Imthurn Facility and the Respondents Ohio EPA conducted between 1996 and 1998, Ohio EPA has determined that, beginning in 1977 and continuing until at least 1991, Respondents sold or otherwise provided to Mr. Imthurn 55-gallon drums of waste material, some of which was identified as "spent lacquer." Mr. Imthurn provided some invoices dated 1977 and 1978 from Respondents recording the sale of "spent lacquer" to Mr. Imthurn.
7. At the Napoleon Facility, Respondents generated listed and characteristic hazardous waste. The hazardous waste consisted of a liquid phase (top or solvent layer) and a semi-solid phase.
8. On January 23, 1997, Ohio EPA and U.S. EPA conducted a preliminary assessment at the Imthurn Facility. The Agencies discovered approximately 1500 deteriorating 55-gallon drums containing unknown liquids and sludges. Several drums appeared to have leaked their contents into the soil.
9. Analytical results of samples taken from some of the drums indicated the drums contained mixtures of toluene, ethylbenzene, xylenes, methyl ethyl ketone, methyl isobutyl ketone, naphthalene, isopropyl benzene, isopropyl toluene, tri-methylbenzenes, 2-methylnaphthalene, and aqueous based paint related materials. Many drums further contained materials with flash points as low as 75°F and/or pH values greater than 13.
10. Toluene, ethylbenzene, xylenes, methyl ethyl ketone, methyl isobutyl ketone, naphthalene, isopropyl benzene, isopropyl toluene, tri-methylbenzenes, 2-methylnaphthalene indicate the presence of hazardous waste and/or hazardous waste constituents.
11. Pursuant to OAC rule 3745-51-21, a waste is a characteristic hazardous waste exhibiting the characteristic of ignitability, if it has a flash point of less than one hundred forty degrees Fahrenheit.

12. Pursuant to OAC rule 3745-51-22, a waste is a characteristic hazardous waste exhibiting the characteristic of corrosivity if it has a pH greater than or equal to 12.5.
13. Some drums were dated, based on label information, lot numbers, and/or other product identification, as having originally contained a product that was manufactured between 1980 and 1984. One drum was dated to 1987, based on the product lot number of the original contents; one drum bore the date "7/14/88" on its label and another was dated "10/10/91." Some drums were identified with "Campbell Soup" stenciled on the sides.
14. Neither Mr. Imthurn nor the Imthurn Facility either applied for or obtained a hazardous waste facility installation and operation permit. Neither Mr. Imthurn nor the Imthurn Facility registered, as required pursuant to ORC § 3734.15(A) and OAC rule 3745-53-11, as a transporter of hazardous waste.
15. On March 18, 1997, Respondent Campbell Soup Company and U.S. EPA entered into an Administrative Consent Order (AOC) for the removal of the hazardous waste stored at the Imthurn Facility. The AOC required, *inter alia*, the identification, inventory and characterization of hazardous waste in drums and small containers, the characterization of contaminated soil associated with leaking containers, and the off-site disposal of hazardous materials, hazardous waste and contaminated soil.
16. On April 18, 1997, the Imthurn Facility was assigned the U.S. EPA Identification Number OHD000022327. The Imthurn Facility is a hazardous waste "facility" as defined in ORC § 3734.01(N) and OAC rule 3745-50-10(A).
17. The removal action was completed by Respondent Campbell Soup Company on March 3, 1998, with the submittal of a final report. All drums and drum contents were removed from the site, and approximately 600 cubic yards of contaminated soil was also removed and disposed off-site by Respondent Campbell Soup Company.
18. The Imthurn Facility is currently unsecured, without access restrictions, and instances of trespass and open dumping of waste by persons unknown have occurred since the completion of the removal action.
19. Ohio EPA has determined that Respondents have:

- a. failed to evaluate the waste generated at the Napoleon Facility, in violation of OAC rule 3745-52-11;
 - b. failed to ensure that the hazardous waste generated at the Napoleon Facility was delivered to a permitted treatment, storage or disposal facility, in violation of ORC § 3734.02(F);
 - c. caused an unregistered transporter to transport hazardous waste to an unpermitted facility, in violation of ORC §§ 3734.02(F) and 3734.15(C);
 - d. failed to notify U.S. EPA of Respondents' hazardous waste fuel activities, in violation of OAC rule 3745-58-45(B);
 - e. marketed hazardous waste fuel directly to a burner without first obtaining a one-time written and signed notice from the burner that it had notified U.S. EPA identifying its waste-as-fuel activities, in violation of OAC rule 3745-58-45(E), pursuant to the requirements of OAC rule 3745-58-43;
 - f. failed to comply with OAC rules 3745-58-42(A), 3745-52-31 and 3745-52-32.
20. The Imthurn Facility is a hazardous waste unit subject to applicable hazardous waste facility requirements, including OAC rules 3745-55-11/3745-66-11, the closure performance requirements for hazardous waste facilities. The Imthurn Facility has not undergone closure, as required by and pursuant to the requirements of OAC rules 3745-55-10/3745-66-10 through 3745-55-20/3745-66-20. The need for closure of the Imthurn Facility is a condition caused by Respondents' violations, noted above.
21. Respondents are generators of hazardous waste, and persons liable for the closure and post-closure requirements for the Imthurn Facility, including corrective action, pursuant to ORC § 3734.16.
22. Ohio EPA has incurred oversight and response costs of \$37,571.50 in connection with the Imthurn Facility, including, but not limited to costs for personnel, drum sampling and analyses, and oversight of removal activities.

V. ORDERS

The Respondents shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within fifteen (15) days after the effective date of these Orders, the Respondents shall prepare and submit to Ohio EPA, for review and approval, a Site Security Plan (SSP) for the Imthurn Facility which meets the requirements of OAC rule 3745-65-14. The SSP shall describe the methods to be used to establish and maintain site security. The security provided by the SSP shall include a fence at the same location that was fenced while Campbell Soup Company was conducting the U.S. EPA removal action at the Imthurn Facility. Fencing is not required in other areas, except where necessary to prevent public access to soil that sampling performed under these Orders reveals to be contaminated with hazardous constituents exceeding applicable clean-up standards.
2. The SSP is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SSP submitted by Respondents and provides Respondents with a written statement of deficiencies, Respondents shall revise the SSP to correct the stated deficiencies and submit to Ohio EPA for approval the revised SSP within ten (10) days of receipt of such written notification. Ohio EPA may approve the SSP with modifications. If Ohio EPA modifies the SSP, the modified plan shall become the approved SSP. If Ohio EPA modifies the revised SSP, the Ohio EPA shall discuss the revisions with the Respondents before the modified SSP becomes the approved SSP.
3. Within thirty (30) days after receipt of approval from Ohio EPA of the SSP, Respondents shall implement the approved SSP in the manner prescribed and pursuant to the specifications in the approved SSP.
4. Within thirty (30) days after the implementation of the SSP, the Respondents shall submit to Ohio EPA, for review and approval, a report, including photographic documentation, that demonstrates that site security has been established in accordance with the requirements of OAC rule 3745-65-14 and Order No. 1, above.
5. Within thirty (30) days after the effective date of these Orders, Respondents shall submit to Ohio EPA a sampling and analysis plan (SAP) for sampling activities to determine the rate and extent of contamination at the Imthurn Facility where

hazardous waste was treated, stored or disposed, including, but not limited to, any existing buildings at the Imthurn Facility. The SAP shall include a schedule for implementation. The SAP is subject to Ohio EPA approval. If Ohio EPA does not approve the SAP and provides Respondents with a written statement of deficiencies, Respondents shall revise the SAP or submit a new SAP to Ohio EPA for review and approval within thirty (30) days of receipt of Ohio EPA's notice of deficiency. Ohio EPA may approve the SAP with modifications. If Ohio EPA modifies the SAP, the modified plan shall become the approved SAP. If Ohio EPA modifies the revised SAP, the Ohio EPA shall discuss the revisions with the Respondents before the modified SAP becomes the approved SAP.

6. Within fifteen (15) days after receipt of Ohio EPA's approval of the SAP, Respondents shall implement the approved SAP pursuant to the schedule of implementation set forth therein.
7. Following receipt of the analytical results generated by the implementation of the approved SAP, Respondents shall, pursuant to the schedule in the approved SAP, submit to Ohio EPA a report that includes the laboratory analysis and evaluation of data generated from implementing the approved SAP. Using the format found in OAC rule 3745-50-42(D), Respondents shall certify that the sampling and analysis was conducted in accordance with the approved SAP. The certification shall be signed by Respondents and shall be included in the SAP Report. The SAP Report is subject to Ohio EPA review and approval.
8. Within sixty (60) days after Respondents' receipt of Ohio EPA's approval of the SAP Report, the Respondents shall submit to Ohio EPA, for review and approval, a closure plan that meets the requirements of OAC rules 3745-55-12/3745-66-12. The closure plan shall address the hazardous waste drum storage area(s) and any other location at the Imthurn Facility where hazardous waste was treated, stored or disposed, including, but not limited to, any existing buildings at the Imthurn Facility, in accordance with OAC rules 3745-55-10/3745-66-10 through 3745-55-20/3745-66-20, and as identified in the SAP Report.
9. In the event that Ohio EPA does not approve the closure plan and provides the Respondents with a detailed written statement of the deficiencies in the closure plan, the Respondents shall submit a revised closure plan to Ohio EPA for approval within thirty days (30) after receipt of such a written statement from Ohio EPA. Ohio EPA may approve the closure plan with modifications. If Ohio EPA modifies the revised closure plan, the modified plan shall become the approved plan.

10. Upon Ohio EPA approval of the closure plan submitted by the Respondents pursuant to Order No. 8 of these Orders, Respondents shall implement the closure plan in accordance with the schedule contained therein and OAC rules 3745-55-13/3745-66-13.
11. Within sixty (60) days after the completion of closure at the Imthurn Facility, the Respondents shall submit certification of closure to Ohio EPA, as required by OAC rules 3745-55-15/3745-66-15.
12. Within thirty (30) days after the submittal of the closure plan pursuant to Order No. 8, above, the Respondents shall submit to Ohio EPA a closure cost estimate and documentation of financial assurance for closure of the hazardous waste storage areas at the Imthurn Facility, in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47.
13. In the event Respondents identify conditions at or emanating from the Imthurn Facility that diminish Respondents' ability to monitor, capture, treat or otherwise remediate the site, Respondents shall immediately implement measures which mitigate the conditions consistent with the approved closure plan. Respondents shall immediately notify Ohio EPA, orally and in writing, summarizing the immediacy and magnitude of the conditions and any actions taken to address the conditions.
14. In the event Respondents identify ground water contamination at or emanating from the Imthurn Facility that exceeds background levels, Respondents shall, within fifteen (15) days after identifying this contamination, notify Ohio EPA of the existence of ground water contamination, and provide copies of all analytical results or reports documenting such contamination.
15. Within forty-five (45) days after notifying Ohio EPA of an event described in Order Nos. 13 or 14 above, Respondents shall submit to Ohio EPA, for review and approval, a revised closure plan, identifying the measures which mitigate the conditions, or, in the event of ground water contamination, complies with the requirements of OAC rule 3745-55-01. In the event that Ohio EPA does not approve the revised closure plan and provides Respondents a detailed written statement of the deficiencies in the revised closure plan, Respondents shall resubmit a revised closure plan that addresses the stated deficiencies within thirty (30) days of receipt of such notice. Ohio EPA may approve the revised closure plan with modifications. If Ohio EPA modifies the revised closure plan, the modified plan shall become the approved plan.

16. To the extent that the Imthurn Facility or any other property to which access is required for implementing these Orders is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to secure from such persons access for Respondents and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within forty-five (45) days from the effective date of these Orders, or within forty-five (45) days after the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.
17. Respondents shall pay to Ohio EPA the amount of \$67,000.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance pursuant to Chapter 3734. of the ORC pursuant to the following:
 - a. Within thirty (30) days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of \$45,000.00, to be deposited into the hazardous waste clean-up fund established pursuant to ORC §3734.28. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Department 631, Columbus, OH 43265-0631, made payable to "Treasurer, State of Ohio." Respondents shall submit a copy of the certified check in accordance with Section IX of these Orders;
 - b. In lieu of paying \$22,000.00 of the civil penalty, Respondents may implement the Solid Waste Collection supplemental environmental project (SEP) at the Imthurn Facility as follows:
 - i. Within forty-five (45) days after the effective date of these Orders, Respondents shall implement the SEP by removing and properly disposing of solid waste at the Imthurn Facility.
 - ii. Within thirty (30) days after the completion of the SEP at the Imthurn Facility, the Respondents shall submit to Ohio EPA a written report, including any receipts associated with the expenses and photographic documentation which demonstrates that the SEP has been implemented in accordance with this order.
 - c. Should Respondents fail to implement the SEP in a timely manner, or fail to fully implement the SEP in the amount of at least \$22,000 for the SEP within

one hundred eighty (180) days after the effective date of these Orders, Respondents shall pay to Ohio EPA the remaining balance of the civil penalty which will be deposited into the hazardous waste cleanup fund established pursuant to ORC §3734.28. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Department 631, Columbus, OH 43265-0631, made payable to "Treasurer, State of Ohio." Respondents shall submit a copy of the certified check in accordance with Section IX of these Orders.

18. Within thirty (30) days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of \$37,571.50 in reimbursement for costs incurred by Ohio EPA, which are assessed pursuant to ORC § 3734.16 and which will be deposited into the Hazardous Waste Special Cleanup Account. Payment shall be made by tendering a certified check for \$37,571.50 to Ohio EPA, Department 631, Columbus, Ohio 43265-0631, made payable to "Treasurer, State of Ohio." A copy of this check shall be submitted in accordance with Section IX of these Orders.

VI. TERMINATION

The Respondents' obligations under these Orders shall terminate when the Respondents demonstrate in writing and certify to the satisfaction of Ohio EPA that all obligations under these Orders have been performed and Ohio EPA's Division of Hazardous Waste Management acknowledges, in writing, Ohio EPA's acceptance of this demonstration and certification.

This certification shall be submitted by the Respondents and shall be signed by a responsible official of each Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of each Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a signatory to these Orders, for any liability arising out of or relating to the operations of the Respondents' Napoleon Facility, and/or the Imthurn Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondents' operation of its Napoleon Facility, or their activities at the Imthurn Facility. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders, and other documents required under these Orders to be submitted to Ohio EPA, shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
347 North Dunbridge Road
Bowling Green, Ohio 43402

and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
Attn: Manager, Compliance Assurance Section
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building and courier services:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
Attn: Manager, Compliance Assurance Section
122 South Front Street
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

Correspondence to Respondents shall be directed to the following address:

Osman M. Aly, Ph.D.
Consultant - Environmental Affairs
Campbell Soup Company, Inc.
1 Campbell Place
Camden, NJ 08103

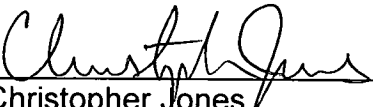
X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking administrative, legal or equitable action as deemed appropriate and necessary for noncompliance with these Orders, including seeking penalties against the Respondents. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondents to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED:



Christopher Jones

Director

OCT 16 2001

Date

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations addressed in these Orders, the Respondents agree that these Orders are lawful and reasonable, that

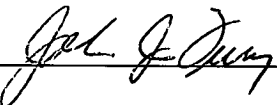

the times provided for compliance herein are reasonable and that the Respondents agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondents' liability for the violations cited herein.

The Respondents hereby waive the right to appeal the issuance, terms and service of these Orders and they hereby waive any and all rights they might have to seek administrative or judicial review of these Orders either in law or equity. Nothing herein shall restrict the right of Respondents to appeal any other action of the director, including, but not limited to, the director's action on the closure plan. Respondents waive any right they may have to appeal Ohio EPA's action on the SSP and SAP.

Notwithstanding the preceding, Ohio EPA and the Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondents retain the right to intervene and participate in such appeal. In such an event, the Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

Campbell Soup Company

 _____ 

9/25/01

Date

Corporate Secretary

Title

Campbell Soup Supply Company L.L.C.

 _____ 

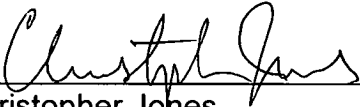
9/25/01

Date

Corporate Secretary

Title

Ohio Environmental Protection Agency



Christopher Jones
Director

OCT 16 2001

Date