

OHIO E.P.A.

OCT 24 2001

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

**In the Matter of:**

**Foster Canning, Inc.**  
c/o Rollind W. Romanoff, Esq.  
6591 West Central Avenue, Suite 103  
Toledo, Ohio 43617

**Director's Final  
Findings and Orders**

**Respondent**

**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 Foster Canning, Inc. ("Respondent") pursuant to the authority vested in the director of the Ohio Environmental Protection Agency ("Ohio EPA") under §§ 3734.13, 3752.16 and 3745.01 of the Ohio Revised Code ("ORC").

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon the Respondent, its assigns and successors in interest. No changes in ownership relating to the Facility will in any way alter the Respondent's responsibilities under these Orders. The Respondent's 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 Chapters 3734. and 3752. 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**

All of the findings of fact necessary for the issuance of these Orders pursuant to ORC §§ 3734.13, 3745.01, and 3752.16 have been made by the director of Ohio EPA, not the Respondent, and are outlined below. Nothing in these Orders, including the findings of fact, is intended by Ohio EPA and the Respondent to be, nor shall any provision of these Orders be construed as or deemed to constitute, an admission of fact, law or liability by the Respondent for any purpose. The director of Ohio EPA has determined the following findings of fact:

1. Respondent owned and operated a tomato packing/canning operation and manufactured pet food at the facility located at 1515 Scott Street, Napoleon, Ohio, Henry County ("Facility"). Respondent was incorporated to do business in the State of Ohio on January 1, 1946.
2. On or about September 15, 2000, R.G. Properties, Inc. purchased the Facility from Respondent. On or about September 15, 2000, R.G. Properties, Inc. assigned title to the Facility to RLG Napoleon LTD and GCG Napoleon LTD.
3. Respondent is a "person" as defined in ORC §§ 3734.01(G), 3752.01(R), and 1.59 and Ohio Administrative Code ("OAC") rules 3745-50-10(A) and 3745-352-05(AA).
4. On June 28, 2000 and July 14, 2000, Ohio EPA received complaints from the Henry County Health Department stating that regulated operations at the Facility had ceased and that the owner or operator of the Facility should be complying with Chapter 3752. of the ORC.
5. On October 18, 2000, Ohio EPA conducted a complaint investigation at the Facility. Respondent was notified of the results of the investigation by letter dated November 15, 2000.

#### **Cessation of Regulated Operations Related Findings of Fact**

6. The Facility is a "reporting facility" as that term is defined in ORC § 3752.01(V) and OAC rule 3745-352-05(E). It is Ohio EPA's position that, sometime prior to September 15, 2000, Respondent engaged in the "cessation of regulated operations," as that term is defined in ORC § 3752.01(C) and OAC rule 3745-352-05(E), at the Facility.
7. As a result of the October 18, 2000 investigation, Ohio EPA issued a notice of violation letter to Respondent dated November 15, 2000 alleging, inter

alia, that Respondent had:

- a. Failed to submit a notice of the cessation of regulated operations on a form prescribed by the director of Ohio EPA within thirty (30) days of ceasing regulated operations, in violation of ORC § 3752.04;
  - b. Failed to designate a contact person, in violation of ORC § 3752.05;
  - c. Failed to remove from the Facility regulated substances and failed to submit a written certification to the director of Ohio EPA concerning the completion of removal actions within ninety (90) days of ceasing regulated operations, in violation of ORC § 3752.06;
  - d. Failed to post warning signs and secure the Facility against unauthorized entry within thirty (30) days of ceasing regulated operations, in violation of OAC rule 3745-352-20 and ORC § 3752.07; and
  - e. Failed to clean up and manage properly the release of used oil, in violation of OAC rule 3745-279-22(D).
8. By letter dated December 11, 2000, Respondent provided a response to Ohio EPA's November 15, 2000 letter.
  9. By letters dated January 23, 2001 and January 24, 2001, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 7.b and 7.d. had been abated.
  10. Ohio EPA has verified that all regulated substances have been removed from the Facility. By entering into these Orders, the director has determined that the violations referenced in Finding Nos. 7.a. and 7.c. and the November 15, 2000 notice of violation letter have been abated.

#### **Hazardous Waste Related Findings of Fact**

11. At the Facility, Respondent was a small quantity generator of "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03.
12. During the October 18, 2000 investigation, Ohio EPA discovered at the Facility numerous containers of unidentified material.

13. On February 19, 2001, Ohio EPA received analytical results for the containers of unidentified material referenced in Finding No. 12. The analytical results did not clearly establish whether the drums contained hazardous waste.
14. On February 21, 2001, Ohio EPA received hazardous waste manifests from R.G. Properties, Inc. indicating that ten (10) 55-gallon drums of aggregated waste material had been shipped off site as hazardous waste to a permitted hazardous waste treatment, storage, or disposal facility.
15. On February 26, 2001, Ohio EPA sampled at the permitted facility the ten (10) drums of aggregated waste material referenced in Finding No. 14. Ohio EPA received analytical results which established that the contents of the drums were hazardous waste.
16. On May 25, 2001, Ohio EPA received a report, with supporting documentation, establishing that the release of used oil referenced in Finding No. 7.e. had been addressed. Ohio EPA has determined that the violation referenced in Finding No. 7.e. has been abated.
17. In addition to the violations referenced in Finding No. 7, the November 15, 2000 notice of violation letter alleged, inter alia, that Respondent failed to evaluate the material referenced in Finding No. 12 to determine if the material was hazardous waste, in violation of OAC rule 3745-52-11. It is Ohio EPA's position that Respondent failed to label and date the containers of material referenced in Finding No. 12., in violation of OAC rule 3745-52-34. By entering into these Orders, the director has determined that the violations of OAC rules 3745-52-11, 3745-52-34, and the violations cited in the November 15, 2000 notice of violation letter have been abated.

## **V. ORDERS**

The Respondent shall achieve compliance with Chapters 3734. and 3752. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,100.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance pursuant to ORC Chapter 3734. and 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 for \$3,100.00 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.

2. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,900.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance pursuant to ORC Chapter 3752. and which will be credited to the immediate removal fund established pursuant to ORC § 3745.12. Payment shall be made by tendering a certified check for \$6,900.00 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**

These Orders shall terminate automatically upon Ohio EPA's receipt and successful negotiation of the certified checks required above.

#### **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 Respondent's operation of the 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 Respondent's operation of the Facility. Ohio EPA and Respondent otherwise reserve 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 address:

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

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

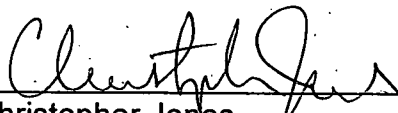
#### **X. RESERVATION OF RIGHTS**

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, including seeking penalties against the Respondent for noncompliance with these Orders. Nothing herein shall restrict the right of the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders. Respondent expressly reserves all rights and defenses it may have with respect to future Ohio EPA actions regarding alleged violations that are 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 24 2001  
\_\_\_\_\_  
Date

**XII. WAIVER**

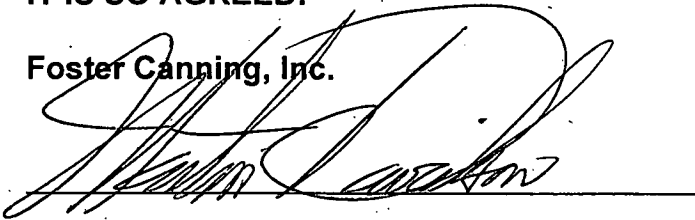
In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations addressed in these Orders, the Respondent consents to the entry of these Orders and agrees to comply with these Orders. Notwithstanding Section X. above, compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the violations cited herein and the violations cited in the November 15, 2000 notice of violation letter from Ohio EPA.

The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

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

**IT IS SO AGREED:**

**Foster Canning, Inc.**



9-24-01

Date

PRESIDENT

Title

**Ohio Environmental Protection Agency**



**Christopher Jones**  
Director

OCT 24 2001

Date