

**FILED**

SEP 17 2003

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF )  
VIOLATION ISSUED TO CHAMP LLC, )  
MR. DON HESKETT, PROJECT MANAGER, )  
P.O. BOX 127, 515 ALBIN STREET )  
ALBIN, WYOMING 82050 )

DOCKET NO. 3503-03

03-2200

**NOTICE OF APPEAL AND PETITION FOR HEARING**

Champ, LLC ("Champ" or "Petitioner"), hereby appeals the Notice of Violation and Order issued by the Department of Environmental Quality under Docket No. 3503-03 and requests a hearing pursuant to the Environmental Quality Act, the Administrative Procedures Act and the Environmental Quality Council's ("EQC") Rules of Practice and Procedure. In support of this appeal, Champ advises the EQC as follows:

**INFORMATION ABOUT THE PETITIONER:**

1. The Petitioner filing this appeal is Champ, LLC, P.O. Box 127, 515 Albin Street, Albin, Wyoming, 82050. The Project Manager for Champ is Mr. Don Heskett. Champ is represented by the undersigned counsel. Correspondence and information related to this appeal should be served on counsel at the address provided below.

**BACKGROUND:**

2. Champ operates a hog farming operation in Albin, Wyoming under multiple lease agreements with purchase options. Champ began operations under its leases in the summer of 2000. The leases expire in the summer of 2005, subject to Champ's option to purchase the facilities. The operation consists of two sow farms, three nurseries, three finishers, one isolation barn, seven effluent lagoons and corresponding land application areas permitted through the DEQ for application of lagoon effluent.
3. Champ's activities are carried out on parcels of real property under leases and contractual agreements with the landowners for land application of lagoon effluent. Flush water from the facilities is piped to effluent lagoons, and from the lagoons to center pivot sprinklers for land application on adjacent lands, pursuant to land application permits issued by the DEQ.
4. Land application areas are located adjacent to the facilities. In the two instances relevant to this appeal, the nursery and finisher sites are located on one side of a county road, and permitted land application areas are located on the other side of the county road. The lands on both sides of the county roads are owned by the

same parties who lease or contract with Champ, and the lands on both sides of the road are part of Champ's permitted operations.

BASIS FOR APPEAL:

5. The regulation at issue in this appeal is Chapter 2 Section 11 of the Air Quality Rules and Regulations, which provides in relevant part:
  - (a) The ambient air standard for odors from any source shall be limited to:
    - (i) An odor emission at the property line which is undetectable at seven dilutions with odor free air as determined by a scentometer as manufactured by the Barneby-Cheney Company or any other instrument, device, or technique designated by the Division as producing equivalent results. The occurrence of odors shall be measured so that at least two measurements can be made within a period of one hour, these determinations being separated by at least 15 minutes.
6. The NOV indicates that the DEQ measured the alleged violations at two locations along county roads. From the description provided in the NOV, the measurement locations were as close to Champ's effluent lagoons as inspectors could get from a public roadway, and within the boundaries of Champ's permitted hog farm operations.
7. With respect to both alleged violations, both sides of the county road from which the measurements were taken are part of the permitted facilities utilized by Champ for effluent lagoons and land application of effluent waste in accordance with permits issued by the DEQ.
8. County roads at which the measurements were taken are not the "property line" for purposes of implementation of Chapter 2 Section 11, as they are not the boundary of Champ's permitted operations, and instead are merely county road rights of way running through the permitted operations. There are no receptors (homes, schools, businesses, etc.) anywhere near the locations where the measurements were taken, and the lands adjacent to the locations at which the measurements were taken are controlled by Champ or its lessors.

9. As part of its stepped-up enforcement program for hog farms, the DEQ measured odor around the boundaries of Champ's operations in the months of April, May and June of 2003. No fewer than ten separate measurements were taken at various locations around the perimeter of the permitted sites. No exceedences of the odor standard of 7:1 were recorded. See Attachment 1 (Letter and table from the DEQ).
10. The DEQ has repeatedly failed to find a violation outside of the property line of Champ's operations. Conducting compliance measuring for a violation from locations in the middle of Champ's permitted operations is inconsistent with the letter and intent of Chapter 2 Section 11 and cannot reasonably form the basis for a violation of the standard.
11. To interpret the odor standard as being applicable from a county road transecting Champ's operations would also render compliance under all circumstances impossible, because compliance within such a short distance of the facilities is technologically impracticable and economically infeasible to achieve.
12. In addition, requiring or measuring compliance at such a location disregards all of the considerations prescribed by W.S. § 35-11-202, which provides:

35-11-202. Establishment of standards.

(b) In recommending such standards or requirements the administrator shall:

(i) Consider all the facts and circumstances bearing upon the reasonableness of the emissions involved, including:

(A) The character and degree of injury to, or interference with the health and physical well being of the people, animals, wildlife and plant life;

(B) The social and economic value of the source of pollution;

(C) The priority of location in the area involved;

(D) The technical practicability and economic reasonableness of reducing or eliminating the pollution; and

(E) The social welfare and aesthetic value.

A consideration of these factors militates heavily against construing the odor standard to allow measurement for compliance at the locations described in the NOV.

13. Champ's facilities are properly designed and permitted in full compliance with all DEQ Regulations. The facilities are working property and are being operated optimally to ensure proper functioning of the lagoon and land application systems.
14. Champ further contests the subjectivity and inaccuracy inherent in the use of the scentometer method in determining compliance with air quality regulations, and contends that the use of such a method is prejudicial to Champ and cannot form the basis for an enforceable standard. Champ further reserves the right to challenge the methodology, sample collection method, inspector training and qualification and protocol used, as may be warranted after completion of discovery.
15. Champ further challenges the NOV on grounds that the inspectors were unable to differentiate odor from Champ's facilities from other sources, including cattle operations, fish farming and ambient air odors in the vicinity of Champ's operations.
16. Champ further contests the Order issued with the NOV on the grounds that the mitigation suggested or requested by the DEQ is not technically practicable, economically feasible, or warranted in light of the circumstances and the considerations of W.S. § 35-11-202.
17. As Champ has been provided with nothing more than the bare NOV and Order, it is unaware of many of the relevant facts and circumstances surrounding the DEQ's investigation of the alleged violation. Accordingly, Champ reserves the right to raise additional grounds in support of this Petition as may be appropriate after further inquiry.

WHEREFORE, Champ requests that the EQC grant the following relief:

1. Grant Champ a contested case hearing on its appeal pursuant to the Environmental Quality Act, W.S. § 35-11-112, the Administrative Procedures Act and the EQC's Rules of Practice and Procedure.
2. Disapprove, revoke and repeal the DEQ's Notice of Violation and Order in this matter.

3. Provide such other and further relief as the EQC determines just and equitable in the premises.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of September, 2003.

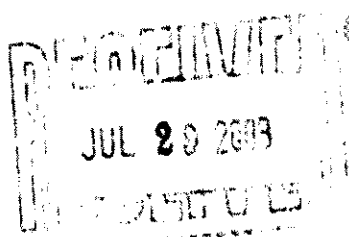
FOR CHAMP, LLC.



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The State  
of Wyoming



## Department of Environmental Quality

Dave Freudenthal, Governor

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<b>ADMIN/OUTREACH</b> (307) 777-7758 FAX 777-3010	<b>ABANDONED MINES</b> (307) 777-6145 FAX 777-6462	<b>AIR QUALITY</b> (307) 777-7391 FAX 777-5616	<b>INDUSTRIAL SITING</b> (307) 777-7368 FAX 777-6937	<b>LAND QUALITY</b> (307) 777-1750 FAX 777-5664	<b>SOLID &amp; HAZ. WASTE</b> (307) 777-7769 FAX 777-5973	<b>WATER QUALITY</b> (307) 777-7181 FAX 777-5073
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July 28, 2003

Mr. Don Heskette  
Project Manager  
Champ, LLC  
P.O. Box 127  
515 Albin Street  
Albin, WY 82050

**RE:** Summary of Odor Complaints and Evaluations Conducted Near Albin, Wyoming - April through June 2003

Dear Mr. Heskette:

Enclosed with this letter is an Air Quality Division (Division) memorandum summarizing recent odor complaints and the Division's subsequent odor evaluation activities conducted in the Albin, Wyoming area during the months of April, May, and June 2003. As stated in the accompanying memorandum, no violations of the state's odor standard was detected during any of the odor evaluations conducted by Division inspectors. I apologize for the delay in providing you with this information. I also want to thank you for the time and courtesy that you and Mr. Rick Boomgarden extended to us during the odor evaluations Ms. Kristi Tarantola and myself conducted on April 24, 2003.

As a final matter, and one that I'm sure you're probably already aware of, on June 30, 2003 the Environmental Quality Council (EQC) directed the Division to begin monthly monitoring of the odors associated with confined hog feeding operations. The monthly odor monitoring is to take place in the towns of Wheatland and Albin, Wyoming from March through October each year for as long as appropriate. The monitoring will include two site visits per month at each operation. One of the site visits during the month will be an overnight stay to obtain a comprehensive survey during off hours. As a courtesy, myself or Ms. Tarantola will contact your office the afternoon before any overnight monitoring is scheduled.

Sincerely,

Glenn A. Spangler  
District 1 Engineer  
WDEQ Air Quality Division

GAS/gas  
Enclosure(s)

cc: Champ, LLC Compliance File (w/ enclosure)  
Bob Gill, SSC Program Manager, WDEQ Air Quality Division (w/ enclosure)  
Glenn Spangler, SSC District Engineer, WDEQ Air Quality Division (w/o enclosure)

Attachment

1

Table 2: District Odor Evaluation Results - Albin, Wyoming

Date	Time (hrs)	Odor Evaluator	Odor Detection Levels *							Odor Evaluation Information			
			Detected By Nose	Scent. 2:1	Scent. 7:1	Scent. 15:1	Scent. 31:1	Scent. 170:1	Scent. 350:1	Wind Direction	Wind Speed (mph)	Odor Source Description	Evaluation Site Location Description, Temperature, and Sky Conditions
4/24/03	0930	Spangler	Nose	2:1	-					312°	8-12	Champ Site II	North side of Rd. 225 approximately 1/2 to 3/4 mile west of Rd. 159/Rd.225 intersection. No upward odors detected.
4/24/03	1200- 1215	Spangler	Nose	-	-					Variable	Variable	Champ Site I	Detected no odors along Rd. 225 from Rd. 159/Rd.225 intersection, east to Pine Bluffs Hwy. Winds were from a northerly direction.
5/27/03	1645	Spangler	Nose	-	-	-				340°	8-12	Champ Site II	County Rd. 225 south of Champ Site II
5/27/03	1650	Spangler	Nose	2:1	-	-				30°	8-12	Champ Site II	County Rd. 225 south of Champ Site II
5/27/03	1655	Tarantola	Nose	-	-	-				10°	8-12	Champ Site II	County Rd. 225 south of Champ Site II
5/29/03	0943	Spangler	Nose	2:1	-	-				290°	19-24	Champ Site II	County Rd. 159, 1/4 - 1/2 mile south of Rd. 159/Rd.227 intersection. Wind direction was in line with center pivot to the northeast of Champ Site II. Approx. 100 - 150 yrs downwind.
5/29/03	0945	Tarantola	Nose	-	-	-				290°	19-24	Champ Site II	County Rd. 159, 1/4 - 1/2 mile south of Rd. 159/Rd.227 intersection. Wind direction was in line with center pivot to the northeast of Champ Site II. Approx. 100 - 150 yrs downwind.
5/29/03	1027	Tarantola	Nose	-	-	-				290°	25-30	Champ Site II	County Rd. 159, 1/4 - 1/2 mile south of Rd. 159/Rd.227 intersection. Wind direction was in line with center pivot to the northeast of Champ Site II. Approx. 100 - 150 yrs downwind.
5/29/03	1031	Spangler	Nose	-	-	-				290°	25-30	Champ Site II	County Rd. 159, 1/4 - 1/2 mile south of Rd. 159/Rd.227 intersection. Wind direction was in line with center pivot to the northeast of Champ Site II. Approx. 100 - 150 yrs downwind.
6/17/03	-	Tarantola	Nose							-	-	Champ Site II	Drive by on County Rd. 228 and Rd. 159. Weak odors were detected briefly, but could not be tracked down.

\* For each odor evaluation, readings during which odors were detected using the scentometer are identified in the table by specifying the appropriate dilution level. Readings during which no odors were detected are indicated using a dash symbol (-). If a cell is blank, no odor readings were taken at the specified dilution level.