

FILED

JAN 03 2005

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
T. Lorenzon, Director
Environmental Quality Council

STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF)	
VIOLATION ISSUED TO CHAMP LLC,)	
MR. DON HESKETT, PROJECT MANAGER,)	Docket No. 03-2200
P.O. BOX 127, 515 ALBIN STREET,)	
ALBIN, WY 82050)	

JOINT MOTION FOR DISMISSAL OF NOTICE OF VIOLATION, ORDER AND APPEAL

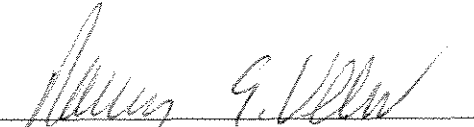
The Department of Environmental Quality (“DEQ”), Air Quality Division (“AQD”) and Champ, LLC (“Champ”) hereby stipulate and jointly move as follows:

1. On September 3, 2003, the DEQ served Champ with Notice of Violation and Order under DEQ Docket No. 3503-03 (“NOV and Order”). Said NOV and Order alleged that Champ violated the odor standard under Chapter 2 Section 11 of the Wyoming Air Quality Standards and Regulations (“WAQSR”).
2. On September 17, 2003, Champ filed its Notice of Appeal of the NOV and Order with the Environmental Quality Council (“EQC”), contesting the allegations of violations of the air quality odor standards and the administrative Order.
3. WYO. STAT. § 16-3-107(n) provides for disposition of contested cases by stipulation of the parties.
4. The parties have negotiated at arms length and in good faith regarding the issues involved in this appeal and have reached and stipulated to an agreement that obviates the need for any determination by the EQC as to the merits of the NOV and Order.
5. A copy of the parties’ Settlement Stipulation is attached hereto as Exhibit A to advise the EQC of the manner in which this matter was resolved between the parties.

WHEREFORE, the parties jointly move the EQC to place this matter on the EQC's agenda for dismissal at the earliest date as is convenient for the EQC, and to dismiss the Notice of Violation and Order under DEQ Docket No. 3503-03 and Champ's appeal of the same.

DATED this 3rd day of ~~December~~ January, 2007.

ATTORNEY FOR RESPONDENT DEQ: ATTORNEY FOR PETITIONER CHAMP:



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Assistant Attorney General
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307-632-2888

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

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO CHAMP LLC,)
MR. DON HESKETT, PROJECT MANAGER,) Docket No. 03-2200
P.O. BOX 127, 515 ALBIN STREET,)
ALBIN, WY 82050)

**SETTLEMENT STIPULATION RESOLVING NOTICE OF VIOLATION AND ORDER,
DOCKET NO. 3503-03**

This Settlement Stipulation ("Agreement") is entered into between the Department of Environmental Quality ("DEQ") Air Quality Division ("AQD") and Champ, LLC ("Champ"), for the purpose of fully resolving and disposing of all matters raised by the DEQ's Notice of Violation and Order issued to Champ under Docket No. 3503-03 ("NOV and Order"), and Champ's appeal of said NOV and Order to the Environmental Quality Council.

RECITALS:

WHEREAS, on September 3, 2003, the DEQ issued Champ a Notice of Violation and Order under DEQ Docket No. 3503-03. Said NOV and Order alleged that Champ violated the odor standard under Chapter 2 Section 11 of the Wyoming Air Quality Standards and Regulations ("WAQSR"); and

WHEREAS, on September 17, 2003, Champ filed its Notice of Appeal of the referenced Notice of Violation and Order with the Environmental Quality Council ("EQC"), contesting the allegations of violations of the air quality odor standards and the administrative Order; and

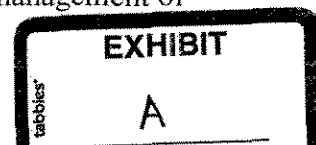
WHEREAS, the parties have negotiated at arms length and in good faith and determined that the issues raised by the DEQ in the NOV and Order and by Champ in its Appeal of the NOV and Order are best resolved under the terms of this Agreement and that this Agreement will serve the interests of justice and the Wyoming Environmental Quality Act thereby making it unnecessary for a contested case to adjudicate the merits of the NOV and Order; and

WHEREAS, WYO. STAT. § 16-3-107(n) provides for disposition of contested cases by stipulation of the parties; and

WHEREAS, the provisions of this Agreement set forth the conditions upon which the DEQ's NOV and Order and Champ's appeal of the same will be dismissed.

IT IS THEREFORE STIPULATED AND AGREED AS FOLLOWS:

1. Champ will conduct two voluntary written reviews of the operation and management of



the Site 1, Site 2, Alpine, MAP, Ponderosa Finisher, Ponderosa Nursery 1 and Ponderosa Nursery 2 facilities as it pertains to the control of odors from those facilities ("Voluntary Reviews"). The first Voluntary Review shall be submitted to the DEQ within 60 days of the execution of this Agreement. The second Voluntary Review will be completed and submitted to the DEQ between 30 and 36 months of the date of this Agreement.

2. The Voluntary Reviews will include the following information: (1) a description of the physical facilities, animal waste management facilities and animal waste disposal practices employed in the operations; and (2) a review and assessment from a qualified independent third party as to odor control methods and management practices utilized for the control of odor at the facilities. The first Voluntary Review, shall be the On Farm Assessment and Review ("OFAER"), previously performed at the referenced facilities through a grant program established by the U.S. Department of Agriculture. The second independent Voluntary Review will be completed by the OFAER program, if the grant program is in existence and available to Champ during the time period in which the second Voluntary Review is to be submitted. If the OFAER program is not available through the Department of Agriculture at such time, Champ will contract with a qualified third party consultant to perform the independent Voluntary Review of its facilities as required herein.
3. Since the OFAER review covers all aspects of the facilities' operations, rather than just odor issues, Champ may, if it deems necessary, submit only those portions of the OFAER review that pertain to odor. However, Champ will make a copy of the OFAER report available to an authorized representative of the DEQ/AQD for review so that the DEQ can verify that a complete disclosure of odor-relevant material has been provided to the DEQ. After DEQ review, those portions of the report not pertaining to odor issues may be retained by Champ and shall be considered proprietary and shall not remain on file with the DEQ or otherwise be subject to disclosure.
4. The purpose of the Voluntary Reviews is for Champ to demonstrate that it is voluntarily utilizing reasonable and appropriate odor management practices for the type and design of the confined swine feeding operations at its facilities, and to enable the DEQ to obtain information relevant to odor rulemaking proceedings which the DEQ has indicated it may be undertaking in the future.
5. To the extent that the Voluntary Reviews make suggestions or recommendations as to improvements to odor control measures that could potentially be employed at the facilities, Champ may, but is not required, to implement such recommendations. If Champ elects not to employ a suggestion or recommendation, the DEQ may call a meeting with Champ to discuss Champ's rationale for not employing such recommendations and the basis for Champ's decision not to employ them.
6. If the Voluntary Reviews demonstrate that Champ is utilizing reasonable and appropriate

odor control management practices for the type and design of the relevant facilities, the DEQ shall consider the facilities to be in compliance with the DEQ odor standards under WAQSR Chapter 2 Section 11, unless the DEQ receives an odor complaint from an identifiable business, resident or legal entity in proximity to the facilities who alleges an adverse odor impact from the facilities and the DEQ determines, after appropriate investigation, that there is an exceedence of the 7:1 standard set forth in Chapter 2 Section 11 of the WAQSR. Measurements for compliance in the event of such complaint, shall be taken in compliance with the requirements of said regulation from a location in near proximity to the location of the complaining receptor.

7. Nothing in this Agreement precludes DEQ/AQD from future enforcement action against Champ, including the issuance of Notices of Violation, Orders, or other action, should Champ violate the Act, WAQSR, DEQ issued permits, or other laws, except that the DEQ shall take no further action for violations alleged under the subject NOV and Order or for any alleged violations of Chapter 2 Section 11 WAQSR that arose, or which could have been brought arising from, odor monitoring occurring prior to the date of this Agreement. Nothing in this Agreement precludes Champ from raising any defense or contesting any future enforcement action brought by the DEQ/AQD and Champ expressly preserves its right to raise any defenses it deems appropriate in the event of any such future enforcement action.
8. Upon execution of this Agreement, the parties shall jointly file a motion to dismiss the NOV and Order and Champ's Appeal thereof now pending with the EQC.
9. Should the EQC not dismiss this matter as requested in the parties' joint motion, or should the EQC take action in the course of dismissing the NOV, Order and Appeal which is inconsistent with or in any way alters the provisions of this Agreement, this Agreement shall be voidable at either DEQ's or Champ's option and Champ shall be entitled to continue the prosecution of its appeal before the EQC.
10. This Agreement represents a good faith settlement of a disputed enforcement action and shall not constitute nor be construed as an admission of liability by Champ as to any allegation raised in the NOV and Order or a violation of any statute, rule, regulation or standard.
11. The State of Wyoming, and the DEQ/AQD, do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. § 1-39-104(a) and all other state law.
12. Neither Party shall have any claim against the other for attorneys fees or other costs incurred with the allegations resolved hereby. Each Party shall bear its own attorney fees and costs, if any. Each Party assumes the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.

13. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.
14. This Agreement represents the full and complete agreement of the parties relating to the matters addressed herein and supercedes any prior discussions of the parties related to the same subject matter.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on this 30th day of December, 2004, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

FOR THE DEQ:

John Corra
 John Corra, Director

Dan Olson 12/13/04
 Dan Olson, Administrator-AQD
 Herschler Building
 122 West 25th Street
 Cheyenne, WY 82002

APPROVAL AS TO FORM:

Nancy E. Vehr 12/13/04
 Nancy E. Vehr, Asst. Attorney General
 Attorney for DEQ/AQD

FOR CHAMP, LLC:

M. Terrill DVM
~~Don Heskett~~ Michael D. Terrill DVM
 Title Vice President
 Address P.O. Box 127
 Albin WY 82050

ATTORNEY FOR CHAMP, LLC:

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Keith S. Burron
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* Admitted in Wyoming
and Colorado

January 3, 2005

Ms. Terri A. Lorenzon
Environmental Quality Council
Herschler Building, Room 1714
125 W. 25th Street
Cheyenne, WY 82002

HAND DELIVERED


***RE: Docket No. 03-2200: Motion to dismiss—In Re: the NOV and Order
issued to Champ, LLC.***

Dear Terri:

Enclosed for filing in the above-referenced matter is the parties' *Joint Motion for Dismissal* with supporting attachments. I am also sending Joe the documents via e-mail in PDF format.

Thank you for your accommodation in getting this scheduled for the January EQC meeting. I plan on attending the meeting on behalf of Champ to address any questions that may arise. Should you have any questions in the meantime please contact me. Thank you.

Sincerely,



Keith S. Burron

cc: Nancy Vehr, Attorney General's Office