EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1635-AIR-E TCEQ ID: RN104603956 CASE NO.: 31185
RESPONDENT NAME: Champion Pet Foods, Inc.

ORDER TYPE:

__1660 AGREED ORDER	_X_FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	_X_AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATERQUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Champion Pet Foods, 2701 East Industrial Boulevard, McLennan County

TYPE OF OPERATION: Pet food processing plant

SMALL BUSINESS: ___Yes __X_No

OTHER SIGNIFICANT MATTERS: A complaint was received on August 10, 2006 concerning nuisance odors coming from the Champion Pet Food facility. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 29, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Section III, MC R-13, (210) 403-4006; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Mr. Benjy Bauer, President and Registered Agent, Champion Pet Foods, Inc., P.O. Box 2344, Waco, Texas 76703-2344
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: Champion Pet Foods, Inc.
DOCKET NO.: 2006-1635-AIR-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_Complaint ___Routine ___Enforcement Follow-up ___Records Review **Date of Complaint Relating to this Case:** August 10, 2006 **Date of Investigation Relating to this Case:** August 16 and 24, 2006 **Date of NOE Relating to this Case:** August 28, 2006 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **AIR** Failed to prevent a nuisance condition caused by blood and waste from a pet food processing operation collecting in a concrete sump pit beside the building [30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(b)].	**Total assessed:** $5,250 **Total Deferred:** $0 __Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $5,250 **Site Compliance History Classification:** __High _X_Average __Poor **Person Compliance History Classification:** __High _X_Average __Poor **Major Source:** __Yes _X_No **Applicable Penalty Policy:** September 2002 **Findings Order Justification:** Three repeated enforcement actions over the prior five year period for the same violation.	**Corrective Actions Taken:** The Executive Director recognizes that Champion has implemented the following corrective measures at the Plant: a. Began cleaning the concrete sump pit once a week; b. Contracted a repairman to construct a building around the pit to contain the smell. The building was completed on September 17, 2006; and c. Contracted another repairman to construct a garage around the open-bed truck to contain the smell of the carcasses ready to be shipped to a rendering facility. This garage was completed on September 19, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision February 15, 2005*

DATES					
Assigned	4-Sep-2006				
PCW	16-Nov-2006	Screening	13-Sep-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Champion Pet Foods, Inc.		
Reg. Ent. Ref. No.	RN104603956		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31185	No. of Violations	1
Docket No.	2006-1635-AIR-E	Order Type	Findings
Media Program(s)	Air Quality	Enf. Coordinator	Trina Grieco
Multi-Media		EC's Team	EnforcementTeam 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History — 15% Enhancement — *Subtotals 2, 3, & 7* $750

Notes: Penalty enhancement due to three previous NOVs issued for the same violation.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet culpability criteria.

Good Faith Effort to Comply — 10% Reduction — *Subtotal 5* $500

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent completed corrective actions on September 19, 2006.

0% Enhancement* — *Subtotal 6* $0

Total EB Amounts	$13
Approx. Cost of Compliance	$2,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $5,250

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $5,250

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $5,250

DEFERRAL — 0% Reduction — *Adjustment* $0

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY $5,250

Screening Date	13-Sep-2006	**Docket No.** 2006-1635-AIR-E	**PCW**
Respondent	Champion Pet Foods, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	31185		*PCW Revision February 15, 2005*
Reg. Ent. Reference No.	RN104603956		
Media [Statute]	Air Quality		
Enf. Coordinator	Trina Grieco		

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 15%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to three previous NOVs issued for the same violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date	13-Sep-2006	**Docket No.** 2006-1635-AIR-E	**PCW**
Respondent	Champion Pet Foods, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	31185		*PCW Revision February 15, 2005*
Reg. Ent. Reference No.	RN104603956		
Media [Statute]	Air Quality		
Enf. Coordinator	Trina Grieco		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent a nuisance condition caused by blood and waste from a pet food processing operation collecting in a concrete sump pit beside the building.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: The nuisance odors resulted in the exposure of a significant amount of contaminants which did not exceed levels that are protective to human health and the environment.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 2

2 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $5,000

Two single events are recommended for the two days on which the nuisance was confirmed (August 16 and 24, 2006).

Economic Benefit (EB) for this violation

Estimated EB Amount $13

Statutory Limit Test

Violation Final Penalty Total $5,250

This violation Final Assessed Penalty (adjusted for limits) $5,250

Economic Benefit Worksheet

Respondent Champion Pet Foods, Inc.
Case ID No. 31185
Reg. Ent. Reference No. RN104603956
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$2,000	16-Aug-2006	19-Sep-2006	0.1	$1	$12	$13
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to implement measures designed to prevent nuisance conditions from reoccurring. Date required based on the date the first nuisance condition was confirmed. Final date based on the date of corrective action completion.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $2,000

TOTAL: $13

Compliance History

Customer/Respondent/Owner-Operator:	CN602831133	Champion Pet Foods, Inc.	Classification: Average	Rating: 4.50
Regulated Entity:	RN104603956	CHAMPION PET FOODS	Classification: Average	Site Rating: 4.50
ID Number(s):	N/A			
Location:	2701 E INDUSTRIAL BLVD, WACO, TX, 76705		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	September 12, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 12, 2001 to September 12, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Trina Grieco Phone: (210) 403-4006

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 09/28/2005 (405433)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/25/2006 (487821)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
Description: Failure to prevent an off property nuisance condition.

Date: 08/03/2005 (395538)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
Description: Failure to prevent an off property nuisance odor.

Date: 05/02/2005 (379597)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
Description: Failure to prevent an off property nuisance condition.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CHAMPION PET FOODS, INC.	§	
RN104603956	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1635-AIR-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Champion Pet Foods, Inc. ("Champion") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Champion presented this agreement to the Commission.

Champion understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Champion agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Champion.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Champion owns and operates a pet food processing plant at 2701 East Industrial Boulevard in McLennan County, Texas (the "Plant").

2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During investigations on August 16 and 24, 2006, TCEQ staff documented nuisance odors caused by blood and waste from Champion's pet food processing operation collecting in a concrete sump pit beside the building.

4. Champion received notice of the violations on September 14, 2006.

5. The Executive Director recognizes that Champion has implemented the following corrective measures at the Plant:

   a. Began cleaning the concrete sump pit once a week;

   b. Contracted a repairman to construct a building around the pit to contain the smell. The building was completed on September 17, 2006; and

   c. Contracted another repairman to construct a garage around the open-bed truck to contain the smell of the carcasses ready to be shipped to a rendering facility. This garage was completed on September 19, 2006.

II. CONCLUSIONS OF LAW

1. Champion is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 3, Champion failed to prevent a nuisance condition, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Champion for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Five Thousand Two Hundred Fifty Dollars ($5,250) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Champion has paid the Five Thousand Two Hundred Fifty Dollar ($5,250) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Champion is assessed an administrative penalty in the amount of Five Thousand Two Hundred Fifty Dollars ($5,250) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Champion's compliance with

all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Champion Pet Foods, Inc., Docket No. 2006-1635-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Champion. Champion is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.

3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Champion if the Executive Director determines that Champion has not complied with one or more of the terms or conditions in this Agreed Order.

4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

5. This Agreed Order, issued by the Commission, shall not be admissible against Champion in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

4/27/07
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Champion Pet Foods, Inc. I am authorized to agree to the attached Agreed Order on behalf of Champion Pet Foods, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Champion Pet Foods, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

11/17/06
Date

BENJY BOWLER
Name (Printed or typed)
Authorized Representative of
Champion Pet Foods, Inc.

PRES.
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.