

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

September 14, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: CHAMPION TECHNOLOGIES, INC.
TCEQ DOCKET NO. 2009-0509-IWD

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for a Contested Case Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Humphrey".

Scott A. Humphrey, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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TCEQ DOCKET NO. 2009-0509-IWD

**IN THE MATTER OF
THE APPLICATION OF
CHAMPION
TECHNOLOGIES, INC.
FOR RENEWAL OF
TPDES
PERMIT WQ 0004306000**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST FOR A CONTESTED CASE HEARING**

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on
Environmental Quality (the Commission or TCEQ) files its Response to the Request for a
Contested Case Hearing in the above-referenced matter:

I. INTRODUCTION

Champions Technologies, Inc. (Champion or Applicant), which operates the
Fresno Plant, has applied to the TCEQ for a renewal of TPDES Permit No.
WQ0004306000, which authorizes the discharge of cooling tower blowdown, storm
water run-off and previously monitored effluent (boiler blowdown) at a daily average
flow not to exceed 4,400 gallons per day via Outfall 001; and boiler blowdown on an
intermittent and flow variable basis via Outfall 101. Outfall effluent limitations are as
follows: pH has a minimum limitation of 6.0 standard units and a maximum limitation of
9.0 standard units, free available chlorine has a daily average limitation of 0.20 mg/l and
a daily maximum limitation of 0.50 mg/l, total copper has a daily average limitation of
0.075 mg/l and a daily maximum limitation of 0.16 mg/l, 5-day biochemical oxygen

demand (BOD₅) has a report requirement for both the daily average and daily maximum limitations, total zinc has a daily average limitation of 0.54 mg/l and a daily maximum limitation of 1.14 mg/l, and *E. coli* has a daily average limitation of 120 colonies/100 mls and a daily maximum limitation of 200 colonies/100 mls. Internal Outfall 101 effluent limitations are as follows: total suspended solids daily average limitation of 30 mg/l and a daily maximum limitation of 100 mg/l, oil and grease daily average limitation of 15 mg/l and a daily maximum limitation of 20 mg/l, and pH has a minimum limitation of 6.0 standard units and a maximum limitation of 9.0 standard units.

The facility is located at 3130 Farm-to-Market Road 521, approximately 2.25 miles north of the intersection of Farm-to-Market Road 521 and State Highway 6 in Fresno, Fort Bend County, Texas. The effluent is discharged into a county drainage ditch, then to Mustang Bayou, then to Persimmon Bayou, then to New Bayou, then to Chocolate Bay in Segment No. 2432 of the Bays and Estuaries. The unclassified receiving waters have no significant aquatic life use for the county drainage ditch, and high aquatic life for Mustang Bayou. The designated uses for Segment 2432 are high aquatic life use, contact recreation and oyster waters.

The TCEQ received the application on June 3, 2008, and the Executive Director (ED) declared it administratively complete on July 14, 2008 and technically complete on September 16, 2008. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal (NORI) was published in the *Houston Chronicle* on July 31, 2008 and in *La Voz de Houston* on July 30, 2008. The ED prepared a draft permit and the Notice of Application and Preliminary Decision for Water Quality TPDES Permit Renewal for Industrial Wastewater (NAPD) was published in the *Houston Chronicle* on

November 20, 2008 and *La Voz de Houston* on November 19, 2008. Notice of a Public Meeting on an Application for a Water Quality TPDES Permit for Industrial Wastewater was published in the *Houston Chronicle* on December 4, 2008. A public meeting was held on January 8, 2009 at the Mustang Community Center in Fresno, Texas at which time the comment period closed.

In response to the various notices, the TCEQ received one request for a contested case hearing from Rodrigo Carreon. OPIC recommends denying the hearing request.

II. APPLICABLE LAW

A. Requests for Contested Case Hearing

Because the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Water Code Chapter 5, Subchapter M, Environmental Permitting Procedures, §§5.551 to 5.556, added by Acts 1999, 76th Leg., ch 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a person requesting a hearing must file the request in writing with the chief clerk no later than 30 days after the chief clerk's transmittal of the executive director's response to comments. 30 TEX. ADMIN. CODE ("TAC") §55.201(c). The request must also substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that

were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TAC §55.201(d).

Under 30 TAC §55.203(a), an affected person is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” This justiciable interest does not include an interest common to the general public. 30 TAC §55.203(c) also provides relevant factors that will be considered in determining whether a person is affected.

These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The Commission shall grant an affected person’s timely filed hearing request if:

- (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission’s decision on the application. 30 TAC §55.211(c).¹

¹ A hearing request can not be based on an issue raised solely in comments that have been withdrawn by written letter filed with the chief clerk prior to the filing of the executive director’s response to comments. 30 TAC §55.211(c)(2)(A).

Accordingly, pursuant to 30 TAC §55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

B. Right to a Contested Case Hearing

As an initial matter, the Commission must determine whether a right to a contested case hearing exists on this application. Under Chapter 26 of the Texas Water Code, the Commission may renew a permit without considering requests for a contested case hearing if:

- (A) the applicant is not applying to:
 - (i) increase significantly the quantity of waste authorized to be discharged; or
 - (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required notice and opportunity to request a public meeting has been given;
- (D) consideration and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.²

² TEXAS WATER CODE §26.028(d) and 30 TAC § 55.201(i)(5).

III. DISCUSSION

A. Applicability of Texas Water Code Section 26.028(d)

Champion's current permit application would not materially change the amount or place of discharge or its monitoring requirements. The effluent limitations and the monitoring requirements remain the same or have become more stringent. The Executive Director points out that the fecal coliform limitation has been changed to an *E. Coli* limitation because the TCEQ has moved from fecal coliform to *E. Coli* as a bacteria indicator. Other changes, including change of address and form/clarification changes in requirement numbers 6 and 7 are, according to the ED, non-substantive.³ OPIC does not disagree. The TCEQ conducted a public meeting, and the ED filed a response to the public comment. OPIC understands the Applicant has a compliance rating of 2.59, which is an average classification.⁴ Such a classification raises no concerns regarding the Applicant's ability to comply with a material term of the renewal permit.

B. Determination of Affected Person Status

Mr. Carreon expresses concerns regarding the wastewater draining into a ditch and then to Mustang Bayou, which he refers to as "Federal Waters." He is also concerned about protecting a public water well just one half mile away and owned by Fort Bend Fresh Water Supply District No. 1. He raises issues regarding potential contamination of other nearby water wells as a result of the discharge, and he addresses potential contamination to surface waters.

³ See ED's technical summary, p. 4

⁴ OPIC understands the ED will include the updated compliance summary in his response to hearing request.

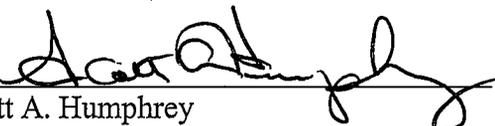
Although Mr. Carreon raises important concerns, OPIC concludes that under Tex. Water Code § 26.028(d), there is not a right to a hearing for this no-increase renewal as described in the analysis *supra*.⁵ Even if there were a right to a hearing, it appears that based on the maps provided by the ED, Mr. Carreon lives about 1.5 miles west of the facility, on the opposite side of the facility from the discharge route. Therefore, OPIC is not certain it would have found that there would be a likely impact to Mr. Carreon from the regulated activity sufficient to deem him an affected person even if there were a right to a hearing.

IV. CONCLUSION

In the matter of Champion's renewal, OPIC finds there is no right to a contested case hearing. Therefore, OPIC recommends denying the request for a contested case hearing.

Respectfully submitted,

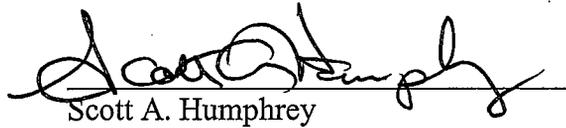
Blas J. Coy, Jr
Public Interest Counsel

By 
Scott A. Humphrey
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⁵ See also 30 TAC § 55.201(i)5(A)

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2009 the original and seven true and correct copies of the foregoing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via facsimile transmission, electronic transmission, Inter-Agency Mail or by deposit in the U.S. mail.


Scott A. Humphrey

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TCEQ DOCKET NO. 2009-0509-IWD

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