

**AFTER-THE-FACT
CONDITIONAL USE PERMIT
(Grease Recycling Facility)**

1. For purposes of this conditional use permit ("Permit"), the terms "Operator," and "Applicant", shall mean or refer to United Grease . ("UG") The term "Owner" shall mean and refer to Tracy Bros. LLC ("Tracy Bros.") as the owner of the parcel on which a grease recycling facility ("GRF") already exists. The term "Permittee" shall mean or refer to UG and Tracy Bros., jointly and severally. The uses permitted under this Permit include all of the following if conducted in a nuisance-free manner: receiving and rendering animal fats; receiving and processing by heating and centrifugation rendered animal fats, vegetable oils, Food Wastes containing vegetable oils or animal fats; the storing of the rendered fat, vegetable oil and Food Wastes prior to processing; the storing of the reclaimed fats and oils; disposal of waste by-products and, the transportation of the reclaimed fats and oils for reuse away from the Property (collectively, "Permitted Uses"). For purposes of this Permit, the term "Permitted Feedstock" shall include only the following: renderable animal fat, vegetable oil and Food Waste containing vegetable oil or animal fat.

2. For purposes of this Permit, the term "Town" shall mean or refer to the Town of Clyman, located in Dodge County, Wisconsin. The term "WPDES Permit" No. WI-0061514-02-0 shall mean the Wisconsin Pollutant Discharge Elimination System Permit and any subsequent amendment thereto issued to ULWR by the Wisconsin Department of Natural Resources ("WDNR"). The acronym CZO means the Clyman Zoning Ordinance. When a number of days for the submission of a document is stated below, the number shall refer to business days unless otherwise specified in this Permit.

3. For purposes of this Permit, the term "GRF" shall refer to and include all tanks, centrifuges, heating equipment, off-loading facilities and other equipment used for the Permitted Uses and their plumbing connections that are located on 13.6 acres at the SE ¼ of the NE ½ of Section 32, Town of Clyman, Dodge County, Wisconsin (with the street address of N2797 State Highway 26, Dodge County, Wisconsin). The term "Food Waste" means nonhazardous wastes that are not regulated under Wis. Admin. Code ch. NR 518 but that are regulated under Wis. Admin Code. ch. NR 214 and are further described in Wis. Admin. Code § NR 214.02. The term "Property" as used in paragraph 8 below shall include the 13.6 acre parcel in the Town where the GRF is currently located.

4. For the purpose of this Permit, the Permittee shall not accept for grease recycling any waste that is not or does not contain a Permitted Feedstock. This provision does not apply to waste whose recycling is expressly exempt from local control by state law.

5. The Permittee shall operate the GRF in a nuisance-free manner, that is in a manner that minimizes to the greatest extent possible odor, noise (including vibration), dust or smoke offensive to the Immediate Neighborhood. The Permittee shall not operate the GRF in a manner or in circumstances where to do so would be detrimental to the

health, safety or general welfare of the Immediate Neighborhood or the community as a whole.

6. The waste byproducts generated by the GRF may only be disposed of in the Town if the disposal complies with all regulations promulgated by the State of Wisconsin for such disposal. All of which regulations are incorporated into and become conditions of this Permit.

7. To the extent the Permittee is required to submit any report to a federal, state or local governmental entity under SARA Title III (Superfund Amendment and Reauthorization Act) for the storage or use of chemicals at the GRF, the Permittee shall submit a photocopy of the same to the Town Clerk within five (5) days of the date such report is submitted to the governmental entity or within five (5) days of the date the submission is due to the governmental entity, whichever is earlier.

8. The Permittee shall maintain records of the wastes recycled, their volume and the time of operation sufficient to identify the source of offensive odors if such odors are complained of. Upon written request of the Zoning Administrator for the Town in conjunction with the Administrator's investigation of an odor complaint associated with the Property, the Permittee shall make available to the Administrator for inspection and copying all such records that the Administrator, in the sound exercise of his discretion, shall deem germane to the complaint.

9. The Permittee shall have an operation and maintenance plan ("O&M Plan") that sets forth best management practices and procedures for operation of the GRF, including procedures that may be needed to comply with spill prevention, control and countermeasures if mandated by federal or state law and procedures for disposal of the residue from the GRF in the event of a malfunction of processing equipment that persists for more than thirty (30) days or the permanent shutdown of the GRF.

10. No waste may be delivered to or accepted for recycling at the GRF before 6:00 a.m. and after 8:00 p.m. on a weekday or before 6:00 a.m. and after 2:00 p.m. on any Saturday, Sunday or the holidays of New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas unless the waste is off-loaded within a building with its bay doors closed. Transfers of waste materials through pipeage within the N2797 Site shall not be considered delivery or acceptance for the purposes of this provision.

11. This Permit does not cover or authorize the conducting of any operations not expressly identified in this CUP.

12. The Owner and Operator shall defend, indemnify and hold harmless the Town and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, arising out of the acts or omissions of the Permittee under this Permit. The Owner or Operator shall have the exclusive right to select defense counsel for the Town pursuant to this provision.

13. On an ongoing basis, the Permittee shall be responsible for obtaining all permits and approvals required by other applicable federal, state and county agencies for all activities conducted on the Property associated with or as a result of the GRF. Copies of all permits, approvals and licenses issued by such agencies shall be provided to the Town Clerk including any future notices of such agencies of alleged non-compliance. Violation of such permits, approvals and licenses that go unreported constitute violations of this Permit.

14. In the event either the Operator or Owner sells or otherwise relinquishes control of or its ownership interest in the GRF to anyone or any entity, this Permit may only continue in force if the Operator's or Owner's successor agrees in writing, acknowledged before a notary public, to be bound by all of the terms and conditions of this Permit. Notwithstanding the foregoing, a prospective new Owner or Operator may seek in advance of any transfer of ownership or operation a determination by the Board that one or more conditions of this Permit may be modified. An applicant for such a determination shall pay the CUP application fee then in force.

15. The Zoning Administrator or the Administrator's appropriate designee may enter the Property to ascertain compliance or to investigate an alleged violation of the terms of this Permit. Anyone inspecting pursuant to this provision may at the Permittee's discretion be escorted by the Operator or Owner (or their Designee) and shall comply with all safety regulations and confidentiality conditions imposed by the Operator on its own employees. Refusal to promptly allow inspection shall constitute noncompliance with this CUP.

16. This Permit shall be reviewed by the Town Board three (3) years after it is issued to verify ongoing compliance with all of its material terms and conditions. The Permittee shall cooperate with the Board in that review by attending the public meeting and responding to the Board's questions, if any. If, based on the information gathered in conjunction with the meeting, the Board determines that this Permit is in need of modifications, additions or deletions, the Board shall thereafter initiate the procedures under the CZO appropriate for taking such actions.

17. Should any section, clause or provision of this Permit or the WPDES Permit incorporated herein be declared by any Court of competent jurisdiction to be invalid, the same shall not affect the validity of this Permit as a whole or in any part thereof, other than the part or parts so declared to be invalid.

FINDINGS

The Town Board of the Town of Clyman finds that the existing GRF will be in conformance with the standards of approval under § 6.2 of the Town's Zoning Ordinance, and the granting of this Conditional Use Permit will not unreasonably interfere with the use, enjoyment and retention of value of neighboring property in the Town provided the conditions listed above are satisfied and continue to be satisfied.

Dated: 12-16, 2008

TOWN OF CLYMAN TOWN BOARD

David J. Blank
Chairperson

Attest: Clerk

Kristine Kobelt

**FINAL DECISION OF THE TOWN OF CLYMAN TOWN BOARD
TO ISSUE AN AFTER-THE-FACT CONDITIONAL USE PERMIT FOR
CONTINUED OPERATION BY UNITED GREASE OF A GREASE
RECYCLING FACILITY AT THE N2797 HIGHWAY 26 SITE IN THE
TOWN OF CLYMAN THAT IS OWNED BY TRACY BROS., LLC.**

The Town of Clyman Town Board (the "Board") conditionally grants to United Grease ("UG") and Tracy Bros. (jointly, the Permittees) the After-the-Fact Conditional Use Permit ("AFCUP") described above as recommended by the Town's Plan Commission (the "Commission") on December 4, 2008, pursuant to the Town of Clyman Zoning Ordinance ("CZO").

The Board conducted a joint public hearing with the Commission, followed by the Commission's public meeting, for among other purposes to take comments from the public on addition of grease recycling as a conditional use in an AB district and rezoning of the Parcel from AG to AB as well as for the purpose of determining whether to recommend approval or denial of an AFCUP for grease recycling at the N2797 Highway 26 Site. Each paragraph of the proposed AFCUP for Grease Recycling was read aloud and the public was provided an opportunity to ask questions or otherwise provide input. A copy of the Commission-Recommended AFCUP is attached hereto. The Board accepted the Commission's recommendation to add the new conditional use to the Clyman Zoning Ordinance ("CZO") but deferred until December 8, 2008 a decision on accepting or rejecting the terms and conditions of the Commission-Recommended AFCUP to recycle grease at the Parcel.

On December 8, 2008, the Board voted three (3) "yes" to zero (0) "no" to issue the Commission-Recommended AFCUP for Grease Recycling to UG and Tracy Bros., conditioned upon: (i) approval by Dodge County of the change in zoning of Parcel with the street address N2797 Highway 26 to AB from AG and the addition of grease recycling as a conditional use in an AB district; and, (ii) the conclusion of Dodge County Case No. 08-CV-226 under the terms in the stipulation between the Town and United Liquid Waste Recycling, Inc. and Tracy Bros., attached hereto.

The Board through the Findings of Fact, Conclusions of Law and Order that follow, hereby renders its Decision pursuant to the Town of Clyman Zoning Ordinance § 6.3(3), consistent with its vote on December 8th.

FINDINGS OF FACT

1. The Commission and Board held a joint public hearing on Thursday, December 4, 2008 to take input from the public on: (i) the adding of grease recycling as a conditional use in any AB district in the Town; (ii) the reclassifying of the zoning of the 13.6 acres parcel (the "Parcel") described below from AG to AB; and (iii) the granting of an AFCUP to UG and Tracy Bros. for such grease recycling operation at the Parcel.
2. The Parcel is located in the SE ¼ of the NE ½ of Section 32, Town of Clyman, Dodge County, Wisconsin, with the parcel number 012-1015-3213-001.
3. UG and Tracy Bros. applied for an AFCUP for the Grease Recycling Facility at the Parcel.

4. Operation of the Grease Recycling Facility will not involve new structures on or new uses of the Parcel.
5. The grease recycling at the Parcel in the past has been conducted and can in the future be conducted in a nuisance-free manner.
6. The operation of a Grease Recycling Facility at the Parcel if done under the terms and conditions of the AFCUP that is attached hereto will not unreasonably interfere with the use, enjoyment or retention of value of the neighboring properties in the Town and will provide benefits to the Town's residents in the form of potential employment and tax revenue and to the environment in the form of reuse of grease, including as a feedstock for the production of biodiesel fuel.

CONCLUSIONS OF LAW

1. The Town has previously adopted village zoning powers pursuant to Wis. Stats. § 60.62 and exercises those powers through the CZO and CUPs granted thereunder to protect and promote the health, safety, welfare, morals, aesthetics, prosperity and overall quality of life for all the Town's residents and property owners.
2. Pursuant to CZO § 6.6(3), the Board is authorized to "grant or deny a conditional use application." Pursuant to CZO § 3.2, the Board is authorized and may impose terms and conditions "in addition to and/or more stringent than" specified by the CZO itself.
3. Recycling of grease constitutes a use subject to conditional approval under a proposed addition to CZO § 4.9(3).


4. The Town, pursuant to its zoning and police powers over conditional and other uses, is authorized to adopt and enforce as its own, the terms or conditions of the Commission Recommended AFCUP and pursuant to CZO § 3.3 the federal, state or county permits and/or approvals applicable thereto.

6. If operated in compliance with the terms of the attached AFCUP and the applicable federal, state or county permits and approvals and continued compliance therewith is maintained by the Permittee, the standards of CZO § 6.2 will be met.

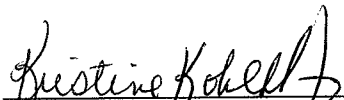
ORDER

The Town hereby conditionally grants the attached AFCUP to UG/Tracy Bros., LLC for operation of a Grease Recycling Facility as a conditional use at the Parcel.

Dated this 16 day of December, 2008



David Blank, Chair
Town of Clyman Town Board

Attest: 

Kristine Kohloff, Clerk

AFTER-THE-FACT
CONDITIONAL USE PERMIT
(Commercial Truck Repair Facility)

1. For purposes of this conditional use permit ("Permit"), the terms "Operator" and "Applicant" shall mean or refer to United Heavy Truck Repair ("UHTR"). The term "Owner" shall mean and refer to Tracy Bros. LLC ("Tracy Bros.") as the owner of the parcel on which the Commercial Truck Repair Facility ("CTRF") already exists. The term "Permittee" shall mean or refer to UHTR and Tracy Bros. jointly and severally. The uses that are permitted by this Permit include the following: engine repair and service, including welding; chassis and brake alignments; parts fabricating; post repair/service testing of work; the operation and maintenance of the equipment customarily used in such repair, service, alignment and fabrication; and storage of fluids and parts customarily associated with motor vehicle repair, fabrication and service (collectively the "Permitted Uses"). Storage of parts for salvage or fabrication may occur out of doors, provided such storage is conducted in a nuisance-free manner.

2. For purposes of this Permit, the term "Town" shall mean or refer to the Town of Clyman, located in Dodge County, Wisconsin. The acronym CZO means the Clyman Zoning Ordinance.

3. For purpose of this Permit, the term CTRF shall refer to and include Building 2 located on the 13.6 acre parcel at the SE ¼ of the NE ½ of Section 32, Town of Clyman, Dodge County, Wisconsin (with the street address of N2797 State Highway 26, Dodge County, Wisconsin). The term "Property" shall include the open spaces on the 13.6 acre parcel where the CTRF is located.

4. All Permitted Uses, except post repair/service testing or minor service and repair, shall take place within the CTRF. Any Permitted Use, except post repair/service testing or minor service and repair, that occurs before 5:00 a.m. or after 10:00 p.m. shall be conducted with the doors to Building 2 closed.

5. Post repair/service testing conducted outdoors on the Property may only occur after 5:00 a.m. and before 10:00 p.m.

6. This Permit does not cover or authorize the conducting of any operations not expressly identified in this CUP.

7. The Owner and Operator shall defend, indemnify and hold harmless the Town and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, arising out of the acts or omissions of the Permittee under this Permit. The Owner or Operator shall have the exclusive right to select defense counsel for the Town pursuant to this provision.

8. On an ongoing basis, the Permittee shall be responsible for obtaining all permits and approvals required by other applicable federal, state and county agencies for all activities conducted on the Property associated with or as a result of the CTRF. Copies of all permits, approvals and licenses issued by such agencies shall be provided to the Town Clerk including any future notices of such agencies of alleged non-compliance. Violation of such permits, approvals and licenses that go unreported to the Town constitute violations of this Permit.

9. In the event either the Operator or Owner sells or otherwise relinquishes control of or its ownership interest in the CTRF to anyone or any entity, this Permit may only continue in force if the Operator's or Owner's successor agrees in writing, acknowledged before a notary public, to be bound by all of the terms and conditions of this Permit. Notwithstanding the foregoing, a prospective new Owner or Operator may seek in advance of any transfer of ownership or operation a determination by the Board that one or more conditions of this Permit may be modified. An applicant for such a determination shall pay the CUP application fee then in force.

10. The Zoning Administrator or the Administrator's appropriate designee may enter the Property to ascertain compliance or to investigate an alleged violation of the terms of this Permit. Anyone inspecting pursuant to this provision may at the Permittee's discretion be escorted by the Operator or Owner (or their Designee) and shall comply with all safety regulations imposed by the Operator on its own employees. Refusal to promptly allow inspection shall constitute noncompliance with this CUP.

11. This Permit shall be reviewed by the Town Board three (3) years after it is issued to verify ongoing compliance with all of its material terms and conditions. The Permittee shall cooperate with the Board in that review by attending the public meeting and responding to the Board's questions, if any. If, based on the information gathered in conjunction with the meeting, the Board determines that this Permit is in need of modifications, additions or deletions, the Board shall thereafter initiate the procedures under the CZO appropriate for taking such actions.

12. Should any section, clause or provision of this Permit be declared by any Court of competent jurisdiction to be invalid, the same shall not affect the validity of this Permit as a whole or any part thereof, other than the part or parts so declared to be invalid.

FINDINGS

The Town Board of the Town of Clyman finds that the existing CTRF will be in conformance with the standards of approval under § 6.2 of the Town's Zoning Ordinance, and the granting of this Conditional Use Permit will not unreasonably interfere with the use, enjoyment and retention of value of neighboring property in the Town provided the conditions listed above are satisfied and continue to be satisfied.

Dated: 12-16, 2008

TOWN OF CLYMAN TOWN BOARD

David C. Blank
Chairperson

Attest: Clerk

Justin Kohler

**FINAL DECISION OF THE TOWN OF CLYMAN TOWN BOARD
TO ISSUE AN AFTER-THE-FACT CONDITIONAL USE PERMIT FOR
THE CONTINUED OPERATION BY UNITED HEAVY TRUCK REPAIR
OF A COMMERCIAL TRUCK REPAIR FACILITY AT THE N2797
HIGHWAY 26 SITE THAT IS OWNED BY TRACY BROS., LLC AND IS
LOCATED IN THE TOWN OF CLYMAN.**

The Town of Clyman Town Board (the "Board") hereby conditionally grants to United Heavy Truck Repair ("UHTR") and Tracy Bros. (jointly, the Permittees) the After-the-Fact Conditional Use Permit ("AFCUP") described above as recommended on December 4, 2008 by the Town's Plan Commission (the "Commission").

The Board on December 4th conducted a joint public hearing with the Commission, followed by the Commission's public meeting. The latter, for among other purposes, to take comments from the public on addition of commercial truck repair as a conditional use in an AB district and rezoning the Parcel (as described below) from AG to AB as well as for the purpose of determining whether to recommend approval or denial of an AFCUP for commercial truck repair ("CTR") at the Parcel. Each paragraph of the proposed AFCUP for CTR was read aloud and the public was provided an opportunity to ask questions or otherwise provide input. The Board accepted the Commission's recommendations on adding the new conditional use and rezoning the Parcel but deferred until December 8, 2008 a decision on accepting or rejecting the terms and conditions of the Commission-Recommended AFCUP for CTR at the Parcel.

On December 8, 2008, the Board voted three (3) "yes" to zero (0) "no" to issue the Commission-Recommended AFCUP for commercial truck repair by UHTR at the Tracy Bros.-owned Parcel, conditioned upon: (i) approval by Dodge County of the change in zoning to AB from AG of the Parcel with the street address N2797 to AB from AG and the addition of commercial truck repair as a conditional use in an AB district; and, (ii) the conclusion of Dodge County Case No. 08-CV-226 under the terms in the stipulation between the Town and United Liquid Waste Recycling, Inc. and Tracy Bros., attached hereto.

A copy of the Commission Recommended AFCUP is also attached hereto. The Board through the Findings of Fact, Conclusions of Law and Order that follow, hereby renders its Decision pursuant to the Town of Clyman Zoning Ordinance § 6.3(3), consistent with its vote on December 8th.

FINDINGS OF FACT

1. The Commission and Board held a joint public hearing on Thursday, December 4, 2008 to take input from the public on: (i) the adding of CTR as a conditional use in any AB district in the Town; (ii) the reclassifying of the zoning from AG to AB of the 13.6 acres parcel (the "Parcel") described below; and (iii) the granting of an AFCUP to UHTR/Tracy Bros. for such operation at the Parcel.
2. The Parcel is located in the SE ¼ of the NE ½ of Section 32, Town of Clyman, Dodge County, Wisconsin, with the parcel number 012-1015-3213-001.
3. UHTR and Tracy Bros. have applied for an AFCUP for the CTR operation at the Parcel.

4. Under the AFCUP, UTHR's CTR facility will operate at the Parcel within a building except for minor repairs, some post-repair testing and nuisance-free parts storage which may be done outdoors.

5. The operation of the CTR facility if done under the terms and conditions of the AFCUP that is attached hereto will not unreasonably interfere with the use, enjoyment or retention of value of the neighboring properties in the Town and will provide benefits to the Town's residents in the form of potential employment and tax revenue.

CONCLUSIONS OF LAW

1. The Town has previously adopted village zoning powers pursuant to Wis. Stats. § 60.62 and exercises those powers through the CZO and CUPs granted thereunder to protect and promote the health, safety, welfare, morals, aesthetics, prosperity and overall quality of life for all the Town's residents and property owners.

2. Pursuant to CZO § 6.6(3), the Board is authorized to "grant or deny a conditional use application." Pursuant to CZO § 3.2, the Board is authorized and may impose terms and conditions "in addition to and/or more stringent than" specified by the CZO itself.

3. Operation of the CTR will not involve new structures or new uses on the Parcel but will constitute a new conditional use.

4. A CTR facility in an AB district constitutes a use subject to conditional approval under the proposed addition to CZO § 4.9(3).


5. The Town, pursuant to its zoning and police powers over conditional and other uses, is authorized to adopt and enforce as its own, the terms or conditions of the Commission Recommended AFCUP for the CTR and pursuant to CZO §3.3 the federal, state or county permits and/or approvals applicable thereto.

6. If operated in compliance with the terms of the attached AFCUP and the applicable federal, state and county approvals or permits and continued compliance therewith is maintained by the Permittee, the standards of CZO § 6.2 will be met.

ORDER

The Town hereby conditionally grants the attached AFCUP to UHTR/Tracy Bros., LLC for operation of a commercial truck repair as a conditional use at the Parcel.

Dated this 16 day of December, 2008


David Blank, Chair
Town of Clyman Town Board

**AFTER-THE-FACT
CONDITIONAL USE PERMIT
(Biodiesel Production Facility)**

1. For purposes of this conditional use permit ("Permit"), the terms "Operator," and "Applicant", shall mean or refer to Badger Biodiesel, Inc. ("BBI"). The term "Owner" shall mean and refer to Tracy Bros. LLC ("Tracy Bros.") as the owner of the parcel on which the biofuel production facility already exists and, the term "Permittee" shall mean or refer to BBI and Tracy Bros. jointly and severally. The uses permitted by this Permit include the following: (i) storage of feedstocks consisting of: soy oil, other vegetable oils, food processing wastes containing vegetable oils and animal fats; storage of chemicals used in the transesterification process used to produce biodiesel and other biofuels from the feedstock, including but not limited to methanol and sodium methylate; storage of reclaimed process by-products, including but not limited to glycerin; and, storage of the biofuels produced on the Property; (ii) production of biodiesel and other biofuels from the feedstock; (iii) mixing and blending of biofuels with other fuels, including the incorporation of fuel additives; and (iv) laboratory and bench scale testing associated with quality control of the biodiesel and with developing improved or new biofuel products, respectively (hereinafter, the "Permitted Uses").

2. For purposes of this Permit, the term "Town" shall mean or refer to the Town of Clyman, located in Dodge County, Wisconsin. The term "Air Permit" shall mean the Air Pollution Control Construction and Operation Permit and any subsequent amendments thereto issued to the Permittee by the Wisconsin Department of Natural Resources ("WDNR"). The acronym CZO means the Clyman Zoning Ordinance.

When a number of days for the submission of a document is stated below, the number shall refer to business days unless otherwise specified in this Permit.

3. For purpose of this Permit, the term "Biodiesel Production Facility" (BPF) shall refer to and include all tanks, vessels and devices used to mix, distill, store and react feedstock in a closed loop system (no venting to the atmosphere) to produce biofuels via the process of transesterification. The BPF approved under this Permit is located in Building 3 at the SE ¼ of the NE ½ of Section 32, Town of Clyman, Dodge County, Wisconsin with the street address of N2797A State Highway 26, Dodge County, Wisconsin.

4. The Permittee shall secure and make available to the Zoning Administrator upon written request all permits and approvals required by any federal, state or county agency concurrent with or prior to receipt of this Permit, including, but not limited to: (i) an Air Permit from WDNR for the BPF, if required by WDNR; (ii) any license for federal or state tax purposes required for use of the biofuel product in over-the-road vehicles; (iii) each certification for a storage tank used in the BPF that is required by the Wisconsin Department of Commerce ("DOC"); and (iv) plan approvals for fire suppression required to be present at the site for storage of any feedstock, reactant, reaction by-product or

biofuel product. The terms and conditions of these permits and approvals are incorporated herein by reference and may be, but are not required to be, enforceable under this Permit, unless expressly precluded under the applicable law.

5. If the Permittee increases the rate of production of biodiesel fuel from 10 gallons per minute by more than 50% or the total annual amount of production to 7.87 million gallons, the Permittee must apply for a new CUP whose terms and conditions will take into account the health, safety and welfare concerns that may have arisen as a consequence of the increase(s). Failure to notify the Town of the increases constitute(s) a violation of this Permit.

6. The Permittee shall provide spill containment for all above ground storage tanks that are part of the BPF and are not enclosed in Building 3.

7. The BPF must operate in compliance with the terms and conditions of any Air Permit that is required and must provide the Zoning Administrator a copy of any notice to or from the WDNR of any acknowledged or alleged non-compliance with the Air Permit.

8. This Permit does not cover or authorize the conducting of any operations not expressly identified in this CUP.

9. The Owner and Operator shall defend, indemnify and hold harmless the Town and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, arising out of the acts or omissions of the Permittee under this Permit. The Owner or Operator shall have the exclusive right to select defense counsel for the Town pursuant to this provision.

10. On an ongoing basis, the Permittee shall be responsible for obtaining all permits and approvals required by other applicable federal, state and county agencies for all activities conducted on the Property associated with or as a result of the BPF. Copies of all permits, approvals and licenses issued by such agencies shall be provided to the Town Clerk including any future notices of such agencies of alleged non-compliance. Violation of such permits, approvals and licenses that go unreported to the Town constitute violations of this Permit.

11. In the event either the Operator or Owner sells or otherwise relinquishes control of or its ownership interest in the BPF to anyone or any entity, this Permit may only continue in force if the Operator's or Owner's successor agrees in writing, acknowledged before a notary public, to be bound by all of the terms and conditions of this Permit. Notwithstanding the foregoing, a prospective new Owner or Operator may seek in advance of any transfer of ownership or operation a determination by the Board that one or more conditions of this Permit may be modified. An applicant for such a determination shall pay the CUP application fee then in force.

12. The Zoning Administrator or the Administrator's appropriate designee may enter the Property to ascertain compliance or to investigate an alleged violation of the terms of this Permit. Anyone inspecting pursuant to this provision may at the Permittee's discretion be escorted by the Operator or Owner (or their Designee) and shall comply with all safety regulations imposed by the Operator on its own employees. Refusal to promptly allow inspection shall constitute noncompliance with this CUP.

13. This Permit shall be reviewed by the Town Board three (3) years after it is issued to verify ongoing compliance with all of its material terms and conditions. The Permittee shall cooperate with the Board in that review by attending the public meeting and responding to the Board's questions, if any. If, based on the information gathered in conjunction with the meeting, the Board determines that this Permit is in need of modifications, additions or deletions, the Board shall thereafter initiate the procedures under the CZO appropriate for taking such actions.

14. Should any section, clause or provision of this Permit be declared by any Court of competent jurisdiction to be invalid, the same shall not affect the validity of this Permit as a whole or any part thereof, other than the part or parts so declared to be invalid.

FINDINGS

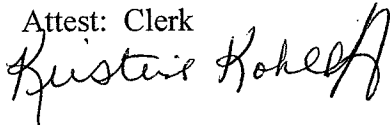
The Town Board of the Town of Clyman finds that the existing BPF will be in conformance with the standards of approval under § 6.2 of the Town's Zoning Ordinance, and the granting of this Conditional Use Permit will not unreasonably interfere with the use, enjoyment and retention of value of neighboring property in the Town provided the conditions listed above are satisfied and continue to be satisfied.

Dated: 12-16, 2008

TOWN OF CLYMAN TOWN BOARD


Chairperson

Attest: Clerk



**FINAL DECISION OF THE TOWN OF CLYMAN TOWN BOARD
TO ISSUE AN AFTER-THE-FACT CONDITIONAL USE PERMIT FOR
CONTINUED OPERATION BY BADGER BIODIESEL, INC.
OF A BIOFUEL PRODUCTION FACILITY
AT THE N2797 HIGHWAY 26 SITE
THAT IS OWNED BY TRACY BROS., LLC.**

A joint public hearing was held by the Town of Clyman Plan Commission (the "Commission") and the Town of Clyman Town Board (the "Board") on December 4th followed by the Commission's own meeting on that date at which the Commission: recommended the addition of biofuel production as a conditional use in an AB District; recommended rezoning of the N2797 parcel (the "Parcel") to AB from AG; read aloud each paragraph of a proposed After-the-Fact Conditional Use Permit ("AFCUP") for biofuel production; and, voted unanimously to recommend the granting of this AFCUP. Each paragraph of a proposed AFCUP for a biofuel production at the Parcel was read aloud and the public was provided an opportunity to ask questions or otherwise provide input. The Board then conducted a public meeting on the adding of the biofuel production use to the list of conditional uses in an AB district and the rezoning of the Parcel from AG to AB, but postponed until December 8, 2008 its decision on the Commission Recommended AFCUP.

The Board voted at a public meeting on December 8th three (3) "yes" to zero (0) "no" to conditionally grant to Badger Biodiesel, Inc. ("BBI") and Tracy Bros. (jointly, the Permittees) the AFCUP as recommended by the Commission, a copy of which is attached hereto. The Commission's recommendations and this

Board's granting of the CUP is part of the Town's effort to assist the Permittees in bringing their biofuel production facility ("BPF") into compliance with the Clyman Zoning Ordinance ("CZO") and to resolve ongoing litigation in Dodge County Case No. 08-CV-226.

The Board, through the Findings of Fact, Conclusions of Law and Order that follow, hereby renders its Decision pursuant to CZO § 6.3(3), consistent with its vote on December 8th, and conditioned only upon: (i) approval by Dodge County of the change in zoning of the Parcel with the street address of N2797 to AB from AG and the addition of biofuel production as a conditional use in an AB district; and (ii) the conclusion of Case No. 08-CV-226 under the terms provided in the stipulation between the Town and United Liquid Waste Recycling, Inc. and Tracy Bros., a copy of which is also attached hereto.

FINDINGS OF FACT

1. The Commission and Board held a joint public hearing on Thursday, December 4, 2008 to take input from the public on: (i) the adding of biofuel production as a condition use in any AB district in the Town; (ii) the reclassification of the zoning from AG to AB of the Parcel described below; and (iii) the granting of an AFCUP to BBI/Tracy Bros. for such biofuel production at the Parcel.
2. BBI and Tracy Bros. have applied for an AFCUP for the biodiesel fuel production operation at the Parcel.

3. The Parcel is located in the SE ¼ of the NE ½ of Section 32, Town of Clyman, Dodge County, Wisconsin, with the parcel number 012-1015-3213-001.
4. BBI's biofuel production facility will be a closed system (no venting to the atmosphere) and has been and may be conducted on the Parcel only within Building 3.
5. The biofuels produced in the past and which will be produced in the future under the AFCUP have a high flash point and, thus, low flammability.
6. Operation of the Biofuel Production Facility will not involve new structures or new uses of the Parcel.
7. Production of the biofuels does not constitute a new use at the Parcel but will be new conditional use under the proposed addition of biofuel production to CZO § 4.9(3).
8. The operation of the biofuel production facility if done under the terms and conditions of the AFCUP that is attached hereto will not unreasonably interfere with the use, enjoyment or retention of value of the neighboring properties in the Town and will provide benefits to the Town's residents in the form of potential employment and tax revenues and to the environment in the form of reuse of agriculturally produced oils and similar feedstock as fuel for vehicles.


CONCLUSIONS OF LAW

1. The Town has previously adopted village zoning powers pursuant to Wis. Stats. § 60.62 and exercises those powers through the CZO and CUPs granted thereunder to protect and promote the health, safety, welfare, morals, aesthetics, prosperity and overall quality of life for all the Town's residents and property owners.
2. Pursuant to CZO § 6.6(3), the Board is authorized to "grant or deny a conditional use application." Pursuant to CZO § 3.2, the Board is authorized and may impose terms and conditions "in addition to and/or more stringent than" specified by CZO itself.
3. The Town, pursuant to its zoning and police powers over conditional and other uses, is authorized to adopt and enforce as its own, the terms or conditions of the Commission Recommended CUP and pursuant to CZO § 3.3 the federal, state or county permits and/or approvals applicable thereto as well.
4. If operated in compliance with the terms of the attached AFCUP and compliance therewith is maintained by the Permittee, the standards of CZO § 6.2 will be met.

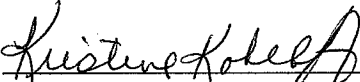
ORDER

The Town hereby conditionally grants the attached AFCUP to BBI/Tracy Bros. LLC for operation of a Biofuel Production Facility at the Parcel as a conditional use under the CZO.

Dated this 16 day of December, 2008



David Blank, Chair
Town of Clyman Town Board

Attest: 

Kristine Kohlhoff, Clerk