

Webmaster note*

You may see odd language or completely missing words, as in paragraph 5. See web page for further explanation or refer to the downloadable MS Word document titled Version Descriptions.

Version #2

CONDITIONAL USE PERMIT

1. For purposes of this conditional use permit ("Permit"), the terms "Operator," and "Applicant", shall mean or refer to United Liquid Waste Recycling, Inc. ("ULWR") The term "Owner" shall mean and refer to Tracy Bros. LLC ("Tracy Bros.") as both the owner of the parcels on which the wastewater treatment facilities already exist or will be constructed and of the wastewater treatment facilities themselves; and, the term "Permittee" shall mean or refer to ULWR and Tracy Bros. jointly and severally.
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. The term WDNR shall mean the Wisconsin Department of Natural Resources. The acronym COD means chemical oxygen demand. 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 "Wastewater Treatment System" shall refer to and include all tanks, lagoons and sludge pads used to mix, treat or store industrial waste or other waste permitted to be accepted at the Facility pursuant to the WPDES Permit (collectively, "Permitted Waste") and their plumbing connections located 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) and any field in the Town classified as agricultural land pursuant to CZO § 4.6 and used by the Permittee for disposal of Permitted Waste, whether treated or directly applied. Direct Application of wastes shall mean landspreading without prior treatment in the Wastewater Treatment System. The term "Industrial 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 as are further described in Wis. Admin. Code § NR 214.02. For the purposes of this Permit, the terms "land spreading" or "land application" shall include but not be limited to, the disposal, injection or land spreading of any Permitted Waste brought to the Property; and the term "Property" shall include all parcels where the Wastewater Treatment System is placed and any wastewater is stored prior to, during or following treatment and any land in the Town on which Permitted Waste, whether treated

or directly applied is landspread. The term "Property" shall not include any field within the Town at which the landspreading of non-agricultural waste pursuant to the CZO § 4.6(3)(q) qualifies as a legal nonconforming use under CZO § § 7.1, 7.4 and 7.5. (A list of such farm fields that have the status of legal nonconforming uses for the purposes of this Permit is attached hereto as Exhibit A.) Because the landspreading of waste on farm fields presents unique circumstances regarding frequency of usability, the time discontinuance in CZO § 7.4(1) shall be extended to twenty-four (24) months for any site: listed on Exhibit A; covered by this CUP under Exhibit B; or, added to Exhibit B via the amendment CUP process of the CZO. The term "immediate neighborhood" shall include at least all property that meets the requirements of § 13.3 of the Town's zoning ordinance with respect to any such landspread parcel.

4. For the purpose of this Permit (i) ULWR shall not accept or dispose of any waste that is not a Permitted Waste and for which ULWR has not received written authorization in advance from the Wisconsin Department of Natural Resources ("WDNR") unless expressly exempt from the requirement of preapproval to accept waste under state law or the WPDES permit; and (ii) Tracy Bros. shall not permit ULWR to dispose of any nonagricultural waste on any land in the Town Tracy Bros. owns or leases unless and until preapproved by WDNR for disposal and approved under paragraph 42 of this Permit. This provision does not apply to waste whose disposal is expressly exempt from local control by state law.

5. Permittees shall not accept for treatment at the Wastewater Treatment System more than 150,000 gallons/day on a monthly average basis – the month being based on the calendar. Approval to exceed the monthly average during the start-up period or any grace period, if granted under Paragraph 17, may be given by the Town's Engineer or the Engineer's Designee. A final flow restriction will be established following evaluation of the 12-month startup of the Wastewater Treatment System, or any additional grace period allowed pursuant to paragraph 17 below.

6. ULWR shall provide the Town Clerk the written concurrence of the WDNR that items 2, 4, and 5 in the letter of Rick Reichardt to Jason Tracy dated September 15, 2006 have been addressed to the satisfaction of the WDNR. Such documentation shall be provided to the Clerk within five (5) days of its receipt from WDNR.

7. The construction and operation of the lagoons shall be conducted as required by all WDNR plan approvals, discharge permits and approved plans of operation or management. ULWR shall operate all wastewater treatment facilities in a manner that minimizes odor, noise (including vibration), dust or smoke that are offensive to the Immediate Neighborhood to the greatest extent possible. ULWR shall not operate the Facilities or land apply Permitted Wastes in a manner or in circumstances where to do so would be detrimental to public health, safety or the general welfare of the Immediate Neighborhood or the community as a whole. Compliance with the odor criterion of this

provision will be rebuttably presumed if WDNR finds compliance under Wis. Admin. Code § NR 429.03; compliance with paragraph 17 of this Permit shall be rebuttably presumed if WDNR has so advised the Permittee in writing.

8. The installation of the liners for the lagoons may be independently monitored by the Town's Engineer (the "Engineer") or the Engineer's designee (the "Designee")—which Designee may include the Permittee's environmental consultant. The liners shall be installed to the satisfaction of the Engineer or Designee. ULWR shall submit shop drawings for the liners for the lagoons to the Engineer or the Designee prior to installation of the liners. All liner seams shall be tested for compliance with and meet or exceed industry standards for PVC membrane liners. There shall be venting for the liners as required by subchapter II of chapter NR 213, Wis. Admin. Code, unless a written waiver of the requirement is granted in writing by WDNR pursuant to § NR 213.11(3)(e) and a copy of the waiver has been provided to the Town. When a waiver is not granted, the plans for venting shall be reviewed by the Engineer or the Designee prior to installation of the liners; and, the venting shall be installed to the satisfaction of the Engineer or the Designee. Unless there is shown good cause therefor, the Engineer shall appoint the Permittee's environmental consultant as the Designee for the purposes of this provision. If the Designee is the Permittee's environmental consultant, the Designee's monitoring fees and expenses shall be payable solely by the Permittee. To the extent the monitoring under this provision is done by the Engineer or a Designee who is not the Permittee's environmental consultant, their reasonable fees and expenses shall be payable by the Permittee in an amount not to exceed \$5,000.

9. No spray irrigation or misting of wastewater, including effluent from the Wastewater Treatment System, is permitted, except as expressly allowed by WDNR.

10. The Permittee shall comply with all regulations promulgated by the WDNR for the application of Industrial Waste and/or municipal sewage sludge, including but not limited to those terms and conditions in the WPDES Permit and any amendments thereof. All of which regulations, terms and conditions are incorporated into and become conditions of this Permit. No application of untreated municipal sewage from municipal wastewater plants, even when mixed with other wastewater, is permitted unless the mixture meets the WDNR's requirements for land application. All notices, forms and other documents required by the WPDES permit to be submitted to WDNR and listed on Exhibit C hereto, all notices to or from WDNR regarding noncompliance with WPDES permit terms and conditions and all other documents required by Paragraphs 6, 19, 20 and 39/51 of this Permit to be submitted to the Town shall be submitted to the Town Clerk within five (5) days of the date due **to WDNR.** All reports required to be provided to the Town pursuant to this Permit shall, to the extent required by the WPDES Permit, be signed by a properly certified wastewater treatment operator and a corporate officer of the Permittee. All documents that are required by this Permit to be submitted to or available for inspection and copying by the Town must be in written (paper) copy but may also be

submitted to the Town using WDNR's electronic Discharge Monitoring Report system, if agreed to by the Town. Any expenses related to the providing of any documents to the Town pursuant to this Permit shall be borne solely by the Permittee.

11. The Permittees are not authorized to continue discharging wastewater into the Wastewater Treatment System unless after the 12-month startup period, or any grace period allowed under paragraph 17, the Permittees have demonstrated to the satisfaction of the WDNR that the Wastewater Treatment System has achieved treatment to levels sufficient to minimize offensive odors to off-site, adjacent and opposite property owners upon land spreading.

12. Land application of wastewater containing municipal sewage sludge on frozen or snow covered soils is prohibited.

13. ULWR shall provide an annual liquid waste volume/leakage report which documents the volume of liquid waste entering the anaerobic lagoon system, the change in storage volume of liquid waste within each of the lined lagoon structures, the volume of liquid waste volume which was removed from the lined lagoon structures and applied to land sites and the volume of liquid waste which cannot be accounted for (leakage). In order to monitor the storage and movement of liquid wastes within the Wastewater Treatment System, the Permittee shall install, operate and record the measurements from sufficient magmeters to permit: the monitoring of the volumes of liquid waste entering the wastewater treatment system through the equalization tank; and the inlet and outlet lines for the anaerobic lagoons. Installation and operation of these meters, in addition to those already approved by the WDNR pursuant to its plan approval for the wastewater treatment system, shall be conditions of this CUP. All meters used to monitor liquid volumes shall be tested on an annual basis for correct calibration by an independent testing company, with the results of such testing submitted to the Town by January 15th of the following calendar year or within thirty (30) days of the test, whichever is earlier.

The Permittees shall at the time of construction of the lagoons install a network of groundwater monitoring wells sufficient in number and location to allow detection of leaks through the liners of the lagoons, should they happen, such that the lagoon with the leaking liner can be identified. The plans for the monitoring well network shall be submitted to the Town's engineer at least 45 calendar days prior to the system's planned start of construction. Unless ULWR receives permission from the Town Board to ignore one or more of the Town Engineer's requirements, all such requirements shall apply as CUP conditions. Reasonable fees and costs of the Engineer's reviews and comments shall be payable by the Permittees no later than 30 calendar days following receipt from the Town Clerk of the Engineer's invoice for services.

14. ULWR is required to complete a 12-month full flow startup test of the Wastewater

Treatment System to determine its process capabilities. Daily, weekly, and monthly process performance data shall be collected by ULWR and their engineering consultant throughout the startup period. Copies of data shall be provided to the Town's Engineer on a monthly basis due on the 15th of the month following the data collection. Data shall include the listed parameters in sections 2.2 and 3.2 of the WPDES Permit plus TSS (total suspended solids) at the anaerobic lagoon effluent and storage lagoon effluent. At the end of the 12 month startup, ULWR may be given 6 months to make additional necessary process adjustments if agreed to by the Town's Engineer. On the basis of the 12-month startup period and the 6-month process adjustment (grace period), if approved by the Town's Engineer, a set of process parameters which may include COD and TSS may be established to control objectionable odor. The process for setting these parameters shall include consultation with and agreement by the Permittee's engineering consultant.

15. Following the start-up period under paragraph 17, no wastewater may be land spread from an anaerobic lagoon unless and until the parameters established in 3.2 of the WPDES permit are met, except if an emergency condition exists and until express written permission from the majority of the Town Board is received. The Board shall not be required to meet in public session in order to grant such permission.

16. When WDNR approval for additional sites is sought by the Permittee a copy of the WDNR Land Application Site Request Form 3400-053 for that parcel, shall be provided to the Town Clerk within five (5) days of its submission to WDNR. At a minimum, the Town's copy shall include: location maps and soil maps, and any soil analyses results and other information showing that the site complies with all application requirements and permit conditions. Spreading on a parcel may commence only upon timely notice to the Town, receipt of WDNR approval and an amendment adding the new site to Exhibit B is granted. **The Town shall make its decision on the request for addition of a site(s) to Exhibit B within thirty-five (35) days of the application being submitted. To accommodate this expedited process the clerk shall forward the application directly to the Planning Commission to hold the hearing under CZO Section 6.6(1).** If an existing spreading site is found by the WDNR to be environmentally unacceptable, ULWR shall immediately cease using the site for spreading.

17. Before commencing operation of the Wastewater Treatment System , the Permittee shall notify the Town Clerk and provide a copy of the report(s) submitted to WDNR under § 1.2.1.3 of the WPDES permit within five (5) days of its submission to WDNR. **The final flow and Parameters of Interest when decided by the Town will become part of the permit as Attachment A.**

18. ULWR shall retain records for as long as required by the applicable regulations of the WDNR or the WPDES Permit.

19. The Permittees shall develop, provide the Town a copy of and implement the provisions of the operations and maintenance manual ("O&M manual") required by the WDNR in item 9 of the approval letter from Richard Reichardt dated September 15, 2006 and any future amendments to the O&M manual. The O&M manual shall list and describe the actions that ULWR will take in the event the Wastewater Treatment System does not function as required by the WPDES permit. The Permittees shall also develop, provide the Town a copy of and implement the provisions of a land application management plan ("LAMP") required by WDNR. For the purposes of this provision the O&M manual shall be provided to the Town by no later than the ___% completion point of the Wastewater Treatment System's construction; the LAMP shall be provided to the Town within five (5) days of its approval by WDNR, including any changes required by WDNR. Failure to follow the provisions of the approved O&M manual or LAMP and any amendments thereto shall constitute noncompliance with this Permit.

20. The Wastewater Treatment System shall be under the direct supervision of a state certified operator as required in Wis. Admin. Code § NR 108.06(2). ULWR shall designate a back-up certified operator in the event the lead operator is unavailable for any reason.

21. All lagoons constructed and their interconnections shall be constructed in compliance with the setback requirements of the Town's Zoning Ordinance and the groundwater separation requirements of the WDNR.

22. All lagoons shall be equipped with fencing or other devices sufficient to deter the general public from obtaining access.

23. The lagoons shall be constructed and operated so as not to cause groundwater contamination.

24. ULWR shall give notice to the Town of any proposed increase of volume of Waste accepted for treatment above the limits established under paragraph 17 above if the increase qualifies as a modification within the meaning of Wis. Stat. §283.59(1). The notice may be a copy of the WPDES modification request or other documentation which shows, the new waste or increased volume of waste resulting because of the proposed modification.

25. Land spreading of wastewater is prohibited unless done in compliance with the setbacks established by the administrative code appropriate to the category of waste being land applied. Land spreading on any field that is **known to be** tilled may only occur if WDNR has been advised that the field is tilled and WDNR has, nonetheless, approved the tilled parcel for landspreading.

26. Prior to the start of landspreading on any property in the Town, the Permittee shall, in addition to the certification or recertification required by the WPDES Permit,

provide the Town a copy of Exhibit D signed by the owner of the land where the Permitted Waste is to be applied. Any failure to obtain the landowner's signature, file Exhibit D with the Town or adhere to the limitations specified in Exhibit D shall constitute noncompliance with this Permit.

27. No wastewater may be landspread at the Property on the holidays of New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas. No wastewater may be spread at the Property 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 or at any time on any Sunday, except as needed to address specific landowners' needs, crop rotation needs or weather conditions including but not limited to imminent freeze up and prolonged periods of adverse conditions to prevent Facility capacity problems. Wastewater may be accepted for delivery at the Facility at any time and on any date, but only if following arrival of the transporting vehicle it is promptly garaged within a building and the exterior doors to the building are closed during the off-loading of the waste.

28. To prevent surface runoff or objectionable odors, all wastewater that is land spread shall be knifed into the soil at the time of spreading unless expressly authorized by WDNR to use a different method. Failure to comply with specific WDNR site-approved requirements for application at a parcel shall constitute non-compliance with this Permit.

29. The Owner or Operator shall provide to any person making a complaint to the Owner or Operator of noncompliance with this permit a copy of the complaint form that appears on the Town's website. The Town will update its website to develop a mutually satisfactory complaint form. The prescribed form shall be entitled Complaint Form and shall include at a minimum room for: the name of the complainant, the date and time of the event complained of, a full description of the events and circumstances underlying the complaint, names of any witnesses to the event, and contact information for the complainant and any identified witnesses. The prescribed form with regard to odor complaints shall also include space to note the approximate wind speed and specific location of witnesses to the odor. All complaints filed with the Permittee shall be provided to the Town Clerk within five (5) days of receipt. Complaints submitted to Owner and Operator shall be provided to the Town Clerk within 5 days of receipt.

30. If an event of noncompliance with the WPDES permit or WDNR code occurs, the Permittee shall submit to the Town the written report describing the noncompliance required under § 5.2.1 of the WPDES permit. Submission of the report to the Town shall be within five (5) days of its submission to WDNR.

31. Permittee shall reimburse the Town for any and all repairs and reconstruction to the public roads resulting directly from the construction of the Wastewater Treatment System. A qualified independent third party, agreed to by the Town and Permittee, and paid for by the Permittee, shall document the condition of the roadways to be used prior to the start and after construction is complete. For that purpose Permittee shall identify the roadways to be used and require by contract those persons engaged in the construction of the Wastewater Treatment System to use only the identified roadways.

This third party shall evaluate, document by digital videotape, and rate road conditions prior to the construction and again within 30 days after construction is complete. If no agreement can be reached on a qualified independent third party, then the Dodge County Road Supervisor shall serve as the qualified independent third party. Determination as to how the roads should be repaired and by whom will be at the option of the Town in consultation with Permittee. If no agreement can be reached on the need for or extent of

repair required, then the decision shall be made by the Dodge County Road Supervisor. Permittee shall provide to the Town the appropriate amount of money to repair the damaged roads within thirty (30) days after receiving notice from the Town of the amount due. Any subsequent damage to a Town road resulting directly and substantially from the operation or maintenance of the Wastewater Treatment System or the land application by Permittee at any Property shall be repaired and the cost of such repair payable in accordance with the above.

32. Permittee shall provide the Town with written notices of completion of construction within 10 days after the Wastewater Treatment System or a specific phase thereof is complete.

33. This Permit does not cover or authorize the conducting of any operation not expressly identified in this CUP, including but not limited specifically to any vehicle repair operation that services vehicles not owned by ULWR, any warehousing operations, any grease recovery operation, and any operation producing biodiesel fuel.

34. 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.

35. 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 Wastewater Treatment System operations and landspreading of liquid wastes, including, but not limited to the approval, licensing and permitting requirements of the WDNR. 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. The Owner or Operator shall provide the Town any notice of noncompliance with the federal, state, or local permits or approvals covered by this provision in the event that the noncompliance alleged by the permit- or approval-granting entity requires remedial action by the Owner and Operator and the action is not completed within the time specified by the granting or approving entity.

36. This Permit shall expire within [TBP] months of its issuance or conditional issuance by the Board of Zoning Appeals (whichever is earlier) unless the Permittee: (i) demonstrates to the satisfaction of the Town Board that construction of the Wastewater Treatment System already approved by WDNR has not been completed within that time, even though construction was timely commenced and diligently pursued; and, (ii) commits to completing construction of the unfinished portion of the Wastewater Treatment System no later than three (3) months after the expiration of the [TBP] month period, **or as soon as possible thereafter based on the circumstances of construction.** This Permit shall be reviewed one (1) year after it is issued. Review of this Permit will be specifically to verify ongoing compliance with all of its material terms and conditions.

37. In the event either the Operator or Owner sells or otherwise relinquishes control of or its ownership interest in the Wastewater Treatment System 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, including but not limited to the surety requirements of paragraph 52 below. 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.

38. The Zoning Administrator or Administrator's designee may enter the Property to ascertain compliance or to investigate an alleged violation **reported under paragraph 38** 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 requirements imposed by the Operator on its own employees to the extent the investigator is apprised beforehand of the confidentiality requirements. A confidentiality requirement may not be enforced if to do so would suppress evidence of noncompliance with this Permit, provided, however, that specific client identifying information shall remain confidential. Refusal to allow inspection shall constitute noncompliance with this CUP. Persons making inspections based on complaints shall be permitted to take samples of wastes and soils representative of the conditions at the time of inspection **subject to the following: 1) samples shall be taken in the presence and full view of a representative of the Permittee. 2) Collected samples shall be immediately split and provided to both the Permittee and the Town representative.** The analyses of the Town's samples shall be at the Town's expense and the results shall constitute public records. All sampling and analyses done pursuant to this provision shall be: (i) taken and preserved in accord with the accepted protocol required by the Wis. Admin. Code; (ii) maintained under a documented chain of custody; (iii) analyzed as required by the Wis. Admin. Code; and (iv) performed at a lab registered or certified by the state for the Parameters of Interest.

39. The Zoning Administrator or the Administrator's designee, in addition to the rights of access under paragraph 60, shall have the right of access to any farm field within the Town where liquid wastes are being discharged by the Permittee for the purpose of

taking samples of the waste. The Administrator may, but is not required to, exercise this right as often as three (3) times per calendar year. When the Administrator takes samples under this provision, he/she shall **do so in the presence and full view of a representative of Permittee and** provide a split sample to the person conducting the discharge, who, along with the Administrator, shall initial and date each sample container. The Administrator is authorized to take as many as three split samples at the location and is further authorized to submit the samples for analysis for applicable parameters noted in section 3.2 of the Permittee's WPDES Permit. The specific parameters analyzed will depend on the WPDES Permit's municipal versus non-municipal waste analysis stipulations.— collectively the Parameters of Interest. The results of such analyses **completed pursuant to this paragraph** shall be provided to the Permittee upon payment by the Permittee of the associated invoice. The Permittee may, but is not required to, submit its sample split(s) for analysis(es) at its own cost. All sampling and analyses done pursuant to this provision shall be: (i) taken and preserved in accord with the accepted protocol found in ch. NR 218; (ii) maintained under a documented chain of custody; (iii) analyzed as required by the Wis. Admin. Code ch. Nr 219; and (iv) performed at a lab registered or certified by the state for the Parameters of Interest.

40. **In the event the Town claims the need to incur reasonable costs, including equipment or labor costs, to provide service to the Permittee, which service is actually necessary and exclusively applicable to the Permittee, is not provided by other public entities and does not arise out of or relate to monitoring the Permittee's compliance with this Permit, the following process shall apply: the Town Board shall proposed in writing what cost it seeks and why those costs are reasonable and necessary. Thereafter, the Town Board, the Permittee, and each party's consultant shall confer and mutually agree on whether those costs are necessary, and if so, what reasonable amount of these costs should be paid by the Permittee.**

41. The Permittee shall **reimburse the Town \$75,000.00 for costs of processing this CUP. Said \$75,000.00 payment shall be made within thirty (30) days of approval of the CUP, otherwise this CUP shall be declared null and void.**

42. **The Permittee must make available to the Town a source or sources of funds in the amount of at least \$720,000.00 which funds the Town may use to remediate all or any part of the Wastewater Treatment System, including emptying and disposing of the untreated, partially treated or treated waste therein, in the event the Permittee abandon the Wastewater Treatment System. The Permittee may satisfy this obligation by the providing of a bond or other financial guarantee. A guarantee may consist of the pledge of real or personal property or a combination thereof. Any pledge of real property under this provision must take the form of a first mortgage to the Town. Any real property pledged under this provision must have a minimum appraised value of \$ _____ and must be free of all liabilities or encumbrances of any kind whatsoever, including, but not limited to, tax liability. Personal property that may be used as guarantee under this provision may only consist of equipment used in the land application of liquid waste, including, but not limited to, tractors, pumps, draglines, portable spray irrigation systems or the like.**

Any personal property that is pledged as the guarantee or part of the guarantee under this provision must have a sufficient current resale value that it, or in combination with the real property pledged, shall at all times equal or exceed the amount specified above. The appraisal for any real property pledged and first mortgage for said real property in a form satisfactory to the Town and a list of any personal property pledged (along with a reasonable estimate of the personal property's current resale value) must be provided to the Town prior to the issuance of this Permit. The list of the personal property will be attached hereto as Exhibit _____. If the combined value of the real and personal property falls below the amount specified above the Permittee must either add further real or personal property to the guarantee so that the combined value equals or exceeds the specified amount. The Permittee shall have no claim that the Town improperly used the funds, except in the instance that the Permittee can show it did not abandon the Wastewater Treatment System and so notified the Town thereof. If the costs of remediation are less than the amount specified above, the Town shall not be required to reimburse to the Permittee the difference. _

43. The following procedures will be followed in the event an allegation of non-compliance with any term or condition of this CUP comes to the attention of the Town Board in writing:

- A. Complaints of non-compliance with a term or condition of ULWR's WPDES permit incorporated by reference or otherwise into the CUP or any WDNR code similarly incorporated will be as follows:
- (i) The Board may request in writing that the Permittees provide it with all correspondence with the WDNR stating WDNR's conclusions whether the circumstances complained of constitute a violation of the WPDES permit or WDNR code and if so what action WDNR proposes the Permittee undertake to remedy the violation and the timetable therefore;
 - (ii) The Permittee shall have thirty (30) days from the date of the Board's written request to provide all such correspondence to the Board; and
 - (iii) Following receipt by the Town Clerk of the requested correspondence, the Board at its next regularly scheduled meeting or any special meeting called by the Board, following proper publication and notice to the Permittees, shall decide whether: the matter requires no further action by the Board; additional information is needed from the Permittees or other interested person; or the convening of a hearing under CZO § 6.4(3) is appropriate. Notice to the Permittees of any hearing under CZO § 6.4(3) shall be given in writing, identify the issues for hearing and the time and place thereof and be given timely to the

Permittees. The hearing shall be limited exclusively to the issues raised in the notice provided under this provision. In any hearing under CZO § 6.4(3), the Town may consider any and all remedies up to and including revocation. Revocation will only be considered for serious violations as provided in D(ii).

- B. Complaints of non-compliance with a term or condition of ULWR's WPDES permit made to the WDNR, but not also made to the Town (either directly under A. above or through the complaint process of paragraph ___ of the CUP) that come to the attention of the Town Board will be as follows:
- (i) The Board will delay taking action on the matter until it receives WDNR's written response to the complaint;
 - (ii) Upon receipt of WDNR's response, the Board may take the action listed in A(ii); and
 - (iii) If the Board proceeds under A(ii), it shall proceed under one of the options under A(iii);
- C. A complaints of non-compliance with the terms and conditions of the CUP not based on ULWR's WPDES permit or WDNR code shall, when it comes to the attention of the Town Board proceed as follows:
- (i) The Board may request in writing that the Permittees provide it with all information the Permittees deem responsive to the complaint, including, but not limited to, any correspondence or reports generated by the Permittees or their consultants;
 - (ii) The Permittee shall have thirty (30) days from the date of the Board's written request to provide all the correspondence and/or reports it so chooses; and
 - (iii) The Board at its next regularly scheduled meeting or any special meeting it calls, shall proceed as under A(iii) above.
- D. Whether under the procedures of A, B, or C above, the Board at the time of the determinations under (ii) or (iii) may give such weight as it deems appropriate to the statements, conclusions and directives of the WDNR, the reports or statements presented by the Permittees' consultants and any countervailing or supporting information from interested persons or the public. Where the Board finds a violation at the hearing under CZO § 6.4(3), it will proceed as follows:

(i) Late submission of documents shall not constitute sufficient grounds for enforcement unless submissions have been late 3 or more times in a calendar year and there is an absence of demonstrated excusable neglect; or,

(ii) Except for violations the Town determines as serious under D (iii) for first violations in a calendar year a warning shall be given and a requirement to take all remedial action required by the State and/or the Town.

(iii) Violation of state land application requirements shall not be grounds to revoke this Permit as it applies to for the Wastewater Treatment Facility.

(iv) In the event the Board finds a violation not covered by (i) represents a serious detriment to the public health or safety or the environment, it may impose whatever remedy is appropriate, including if reasonably necessary, revocation of some or all of the privileges of this Permit.

44. To the extent this CUP differs in any respect from the Town’s zoning ordinance the terms of this CUP shall control.

45. 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 any part thereof, other than the part or parts so declared to be invalid.

FINDINGS
[TBP]

Dated: _____, 2008

TOWN OF CLYMAN BOARD OF
ZONING APPEALS

Chairperson for Board of Zoning Appeals

Attest: Clerk