

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: \_\_\_\_\_, 2008

TOWN OF CLYMAN TOWN BOARD

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Chairperson

Attest: Clerk