

Planning Commission Findings and Recommendation

On May 29, 2019, Dynamic Concepts LLC dba BC Organics LLC (the Applicant) filed an application for a conditional use permit (CUP) to operate a communal digester at parcel W-382, on Mill Road (the Site), a property owned by DMW Real Estate LLC (the Owners). The Site is zoned Agricultural Farmland Preservation. Article XXVIII D (2) (b) 10 of the Town or Wrightstown Zoning Code lists as a conditional use:

An ethanol plant, bio-diesel plant, communal digester, pelletizing plant or other facility that processes raw agricultural commodities, agricultural by-product or agricultural wastes (received directly from farms) to produce bulk fuel or other bulk products.

Legal Considerations in Granting a CUP.

Recently amended CUP review procedures that control what the Town Board must comply with are found at § 60.61(4e) Wis. Stats. which reads as follows:

(4e) Conditional use permits.

(a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b)

1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by

substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 59.694 (10).

To assist in interpretation, the Planning Commission recognizes that the foregoing statute was adopted as part of 2017 Act 67. Act 67 was adopted in response to AllEnergy Corp v. Trempealeau County Environment & Land Use Committee. In that case the majority held, among other things, that public expressions of support or opposition establish a valid basis—that is, substantial evidence—for a decision on a conditional use. That language likely prompted the statutory definition of substantial evidence found in Act 67 that specifically excepts preference and speculation from inclusion as substantial evidence. A review of the legislative history of Act 67 includes the following written legislative testimony from Senator Tiffany, one of the bill's authors:

“We believe that if a local government allows a specific use under a conditional use permit (CUP), and if a property owner satisfies or agrees to satisfy all CUP conditions and requirements, the local government should grant the CUP. Our proposal creates a statutory framework for the CUPs to protect property owners from being subjected from subjective decision making and uncertainty during the CUP process. ...”

Act 67 does not expressly state that a CUP cannot be denied, in fact it implies the opposite by stating at 60.61(4e)(b)2: “ ... The town's decision to approve or deny the permit must be supported by substantial evidence.” It is expressly provided however, that the decision must be based on substantial evidence that is not merely preference or speculation and that a reasonable person would accept in support of the conclusion.

From a local standpoint, Article XXVIII D (2)(a) provides:

(a) The Town Board may issue a conditional use permit for the uses under par. D.(2)(b) if all of the following apply:

1. The use supports agricultural uses in the farmland preservation zoning district in direct and significant ways, and is more suited to a farmland preservation zoning district than to an industrial or commercial zoning district.
2. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
3. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
4. The use is reasonably designed to minimize conversion of land, at and around the use site, from agricultural use or open space use.
5. The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
6. Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

CUP Description

The proposed use is complex and is described in the application and accompanying documents listed in the Documents of Record for this matter, on file with the Clerk and previously circulated to you. For purposes of this report the proposed use would be for a digester system that will process cow manure, as the only input, from neighboring and area farms, treating the waste water and converting the manure into natural gas, a soil amendment product and a liquid fertilizer product. The manure will be predominantly pumped to the site from the Wiese and Country Aire farms (estimated at 70%) with the remainder trucked to the Site. The system is designed to return the treated waste water or brown water to the contributors.

The operators anticipate approximately 800,000 gallons of manure will be processed per day resulting in approximately 400,000 gallons of effluent. The manure will be processed into a semi dry fertilizer that will be returned to the contributors and marketed. The resulting gas (up to 4,000 gallons of methane per day at the Site) and 1,800 MMBtu/day Methane will leave the Site by pipeline to a connection station

At the Site there will be 16 stainless steel digesters, a series of screw presses, two storage tanks, and several outbuildings as shown in the proposal. The operation's site footprint is approximately 20 acres.

The project is exempt from taxes pursuant to § 70.11(21) and 70.111(18) Wis. Stats. The applicant has offered to pay the Town a payment in lieu of taxes equal to the amount attributable to the Town.

The estimated cost of the system is \$60,000,000.00. The project is in part financed by a 15 million dollar Public Service Commission of Wisconsin, Focus on Energy program grant subject to an Incentive Agreement that requires, among other things, that the project must be complete in order to release 80% of the funds. The remaining 20% is payable upon capacity and reliability verification by independent evaluators selected by the Focus on Energy project. Note this is a reimbursement grant. The grant was awarded after review by an evaluation Team consisting of the following members: one designated staff member each from the Wisconsin Public Service Commission, DATCP, and DNR; a Focus on Energy program staff member from APTIM; and a faculty member from UW-Madison's School of Engineering with expertise in biodigestion.

Collection of Evidence regarding the CUP

Before the public hearing in this matter, the Planning Commission held 6 public meetings including one trip to view digester operations at the Crave Brothers Farm in Waterloo and Majestic Meadow Dairy in Sheboygan Falls. The public was invited to address the Commission at 3 of those meetings. Those meetings are listed in the attached exhibit 1. While the meetings were taking place, staff was directed to respond to questions raised. Staff also, in response to questions from Commission or Board members or on its own initiative, collected information to forward to the Commission for its consideration.

The information collected in the first six meetings and the application file is available at the Town's website, at the Clerk's office, and is incorporated herein (Documents of Record see Ex. 2 which is a list of those documents). Note that much of the information in the record was obtained through a public records request to the Town of Holland who had reviewed a similar request earlier this year. Based on the Documents of Record and information collected at the meetings and to facilitate the collection of evidence and to address the issues that were raised, staff created a Conditional Use Analysis Chart the final version of which is attached as exhibit 3.

On September 4, 2019, the Town Board held a public hearing. At that hearing 70 people were present and 10 people spoke. Ms. Rombeck-Bartels of the Wisconsin Department of Natural Resources (DNR) and Dean LaFleur of Robert E Lee and Associates (REL) were present to assist in responding to the questions. As some questions were not completely answered and at the request of a Board member, some additional documents were collected.

Also at the public hearing the Town Zoning Administrator read the Documents of Record document (exhibit 2) and submitted each document into the record.

To address the public comments and review the conditions, the Planning Commission met again on September 18, 2019. Staff presented a review of the public comments and of documentation

collected as a result of those comments, which is attached as exhibit 4. The commission also received a communication from Ann Shibler. Staff response to that communication is also attached as exhibit 5. The Planning commission also reviewed and discussed the conditions attached as exhibit 6.

On September 23, 2019 the Planning Commission met to take a final review of the matters of record and finalize their findings and recommendations.

Based on the foregoing the Planning Commission makes the following findings and recommendation to the Town Board.

FINDINGS

Ordinance Compliance:

1. The Planning Commission reiterates and incorporates the CUP Description portion of this documents and makes the following findings:

The Site is located in the Exclusive Agriculture zone as provided at Article XXVIII D of the Wrightstown Zoning Code (WZC)

The use described in the CUP is an ethanol plant, bio-diesel plant, communal digester, pelletizing plant or other facility that processes raw agricultural commodities, agricultural by-product or agricultural wastes (received directly from farms) to produce bulk fuel or other bulk products listed as a permitted conditional use in Article XXVIII D (2) (b) 10 WZC

2. The CUP has the “Compatible Infrastructure” required by and is consistent with and each requirement of Article XXVIII D (2)(a) WZC as the CUP:

- a. significantly supports agricultural uses in the farmland preservation zoning district in direct and significant ways, making the CUP more suited to a farmland preservation zoning district than to an industrial or commercial zoning district;
- b. is a digester system and located in the farmland preservation zoning district consistent with the purposes of the farmland preservation zoning district as it processes agricultural commodities obtained from farms in the farmland preservation district;
- c. location in the farmland preservation zoning district is reasonable and appropriate, and superior to alternative locations, in that this location is desirable to achieve the efficiency of pipeline transport from neighboring farms, as specifically approved and supported by state law;

- d. is reasonably designed to minimize conversion of land, as it supports more efficient use of cow manure and encourages more freedom in open space use and otherwise encourages the maintaining of real estate as farmland by providing desirable alternative methods for manure disposal;
- e. does not substantially impair or limit the current or future agricultural use of other protected farmland in fact it encourages both by offering an efficient alternative manner of treating cow manure; and
- f. is planned such that construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

Substantial Evidence regarding Grant or Denial

While this CUP is located on private property, the size and logistics of the proposed use merits investigation to assure consideration and protection of the public health, safety and welfare to the extent that substantial evidence is available to address those concerns.

During the evidence collection meetings and public hearing few concerns were raised. Little substantial evidence supporting denial of the CUP was produced.

The principal objection to the CUP has been that the size of the proposed project is untried apparently leading to the conclusion that tried and true technology will not work properly at a larger scale. In response the Wisconsin DNR and Robert E. Lee both testified:

- 1. the technologies to be used in the CUP are tried and true technologies
- 2. the volume of the manure, is a concern that can be addressed by the permitting process
- 3. these conclusions are also consistent with those drawn by Tetra Tech in a commissioned financial feasibility review and the Wisconsin Public Service Commission in its grant review process
- 4. WDNR and REL both stated the operation is technically feasible
- 5. With regard to the technology, the Public Service Commission of Wisconsin found one of the strengths of the B C proposal was its feasibility.

The foregoing opinions constitute substantial evidence that the project is technically feasible. The Planning Commission so finds.

Another objection had to do with possible negative effects of the amount and constituency of the effluent. The planning commission believes the substantial evidence showed this concern was not supported by substantial evidence because:

1. The possible negative effects were not documented but were the opinion of one party.
2. Neither REL or the DNR found support for those conclusions offered by those opinions.
3. The effluent discharge is subject to the WPDES permit who has the authority to stop the discharge.
4. The effluent can, and in fact is designed to be returned to the contributors- no evidence was given that suggests that returning the water would be somehow difficult.
 - a. The system is designed with 4 pipes to facilitate bringing manure to the site and returning the brown water and clean water
 - b. The participating farms have a six month storage capacity for water storage

Concerns regarding odor and noise were raised. Mitigating those concerns are the following:

1. The site is located approximately ¼ mile from the nearest residence.
2. There are 3 residences within a ½ mile of the project.
3. It is in a depression mostly surrounded by trees.
4. The Site is ¼ mile from a mega dairy farm.
5. The Site is immediately across the street from the County land fill site.
6. The secluded location and surrounding uses, support the conclusion that this site is a desirable site for this type of operation with regard to impact on noise and odor issues.

Concern over abandonment of the project were raised. The Planning Commission believes these concerns are consistent with the public interest in avoiding dilapidated and unused properties. The Planning Commission, however, believes that concern can be adequately addressed by a condition providing for remediation upon abandon or discontinues of use.

Several other notice and operational concerns were raised that the Planning Commission believes affects the public health safety and welfare. As explained below, the Commission recommends several conditions that it believes are reasonable, consistent with the public interest and supported by substantial evidence.

In general support of the grant of the CUP is the following:

- The Grant funding for this project is the result of considerable investigation by the Public Service Commission of Wisconsin who concluded the project is feasible and awarded a \$15,000,000 grant to support the project. Their conclusion was based on the report and conclusion of a number of experts as listed in the Public Service Commission of Wisconsin decision to make the grant.
- The purpose of the grant was to find alternative, efficient manners of dealing with cow manure efficiently.

- The Wisconsin DNR issued a report regarding the Holland proposal that expresses their confidence in the technical feasibility of the project. For all relevant issues the Holland project and the CUP are comparable, if anything the Holland proposal was more technically challenging.
- 2 representatives of the DNR stated to the Planning Commission that they have reviewed the CUP and find it technically feasible as has REL and Tetra Tech.
- The construction project will employ people from construction workers to engineers, giving positive support to the community's economics on the short term as provided in the materials accompanying the application.

The Planning Commission therefore finds that substantial evidence supports the granting of the CUP however believes a number of conditions, supported by substantial evidence, are necessary to protect the public interest. The substantial evidence supports that that standards and concerns applicable to the CUP that have been raised and are supported by substantial evidence, can and will be addressed by the Applicant.

Required Conditions

I. GENERAL

Substantial evidence shows that the digester system proposed by the CUP is of unprecedented size and combined technology indicated that if not used for the proscribed purpose there would be little, if any alternative use of the structures needed for the CUP. Those facts raise concern over the uncertainty of the process and the municipal interests in protecting the health and safety of its citizens. The Planning Commission discussed their concerns at length and generally outlined the concerns, public interests' protection and how to address the concerns in exhibit 2.

To secure those public interests the Town believes it is reasonable and necessary to impose the following conditions to insure that the approved of technologies and those reviewed in the CUP process are those implemented and continued by the Applicant and Owner. Based on the information collected, the Planning Commission believes the following conditions are reasonable and consistent with legitimate municipal interests and are supported by substantial evidence.

1. All construction and operations must be in compliance with the representations found in the Application. Of particular concern, without limitation by enumeration, are the following:
 - a. The raw material used in the digestion process shall be cow manure only. There shall be no other raw materials brought to the Site, nor shall there be any other system or procedure used at the Site that is not described in the Application.
 - b. The digestion system shall be anaerobic. It shall also be covered.

- c. From seventy percent 55 to 70% of the manure will be pumped to the Site; the remaining manure will be brought to the site by truck in compliance with a plan disclosing the contributing locations, their approximate load, and the route to be taken to and from the site.
 - d. Gas pressure at the site at the gas line connection point and along the gas pipeline shall be monitored.
 - e. The anaerobic system shall be driven by explosion proof motors in classified areas.
 - f. All aspects of the design of the structure, including materials to be used, shall be adhered to, specifically including the passive containment system designed to catch and retain 110% of the largest single tank capacity, unless a higher requirement is made by a reviewing entity.
 - g. The Application estimates average amounts of manure processing, gas production and effluent discharge quantities per day based on the design of the facility. Prior to any expansion of the operation on the property or any change in the operations that results in significant changes in the estimates, the Applicant shall submit to the Town a plan or description which identifies the intended changes for Town review and approval, which approval shall not be unreasonably withheld.
2. The operation shall be in full compliance with all applicable state, federal and local laws.
3. Prior to the commencement of construction, applicant shall obtain all required permits, including without limitation by enumeration, the following:
- a. WPDES permit.
 - b. WDNR air quality permit.
 - c. WDNR storm water permit.
 - d. WDNR erosion control permit.
 - e. WDNR Chapter 30 permit.
 - f. WDNR high capacity well permit (if necessary).
 - g. Brown County POWTS permit.
 - h. Brown County shore land permit.
 - i. Public Service Commission of Wisconsin Pipeline approval and permit.
 - j. State of Wisconsin building approval and permit.
 - k. Department of Agriculture Trade and Consumer Protection Scale permit (this permit shall not be required prior to commencement of construction but shall be required prior to commencement of operations).
 - l. Wrightstown Building permit.

Applicant shall obtain and maintain all permits throughout the time the process is in operation. Applicant shall notify the Town of any violation of any of the permits or outstanding orders with regard thereto within 3 business days of receipt and shall diligently address any orders. Applicant shall annually provide the Town with proof that the continuing permits are in place.

4. Applicant shall provide a detailed site plan describing landscaping, lighting security measures, signage, pipeline routing and location of structures and substantial conformity with those already provided with the application. The town shall have the right to review and approve such site plans and may condition the approval upon reasonable conditions.

II. PUBLIC HEALTH SAFETY AND WELFARE

Environmental issues and operations preparedness

The size of the propose use, regarding the amount of manure being processed on a daily basis, the extraction of natural gas, the logistics of manure delivery and water/fiber removal all raise legitimate concerns for the public safely with regard to unsanitary material spills and pollution, traffic and road use, explosion and site maintenance, notice to the public and the Town to address these concerns and water pollution. While many of these concerns are addressed in the permitting process, the Planning Commission believes these concerns are legitimate municipal concerns supported by the substantial evidence of the volumes and processes stated in the application. For those reasons, the Planning Commission believes the following conditions are supported by substantial evidence and should be imposed in the public interest.

1. The system shall be constructed with a passive containment system sufficient to catch and retain 110% of the largest single tank capacity.

- a. Applicant shall comply with the spill prevention and emergency response plans approved by the State of Wisconsin.
- b. Alarms shall be installed to monitor the digester 24 hours a day and an individual with authority to supervise emergency response shall be at the premise or on-call 24 hours a day.
- c. Applicant shall compose and submit to the Town for its review and approval of protocol addressing the steps to be taken to address any spill at the digester through the pipeline and connection point.

2. Natural Gas Extraction System. In the interests of public safety and welfare to limit the possibility of explosion at the site, pipelines and connection station and to provide for a procedure to address any odor or other concerns the Planning Commission believes the following conditions are reasonable and supported by substantial evidence

- a. The Natural Gas Extraction System shall be limited to gas extracted from the manure in the digesters and no other source.
- b. Gas pressures at the site shall be monitored on a 24-hour basis and an internal flare system shall be used to lower any gas pressure and minimize the chance of odor escaping from the gas process.
- c. Gas pipelines will be monitored 24 hours a day and will have tracers to facilitate prompt response to any breach or leak from the system.
- d. The connection point shall likewise be monitored and shall be kept and maintained as required by the Public Service Commission of Wisconsin permit.
- e. Applicant shall compose and submit to the Town for its review and approval of protocol addressing the steps to be taken to address any leak or other breach of the gas extraction system from the extraction point at the digester through the pipeline and connection point. Such protocol shall, at a minimum, include the number for 24-hour contact for reporting any leak or breach and the assets available to respond to such situation.

3. Water Quality and Volume. In the interest of protecting the East River watershed and hatchery near the site, and diminish the possibility of pollution at or around the site and to provide for procedures to address any concerns that may intimate those concerns, the Planning Commission believes the following conditions are supported by substantial evidence:

- a. Any effluent discharged into the East River Watershed shall be monitored as to quality and quantity.
- b. All such monitoring, whether required by Wisconsin DNR or not, shall be independently tested and the results thereof shall be forwarded to the Town on a monthly basis for review by the Town's consultant at the discretion of the Town.
- c. The Applicant shall produce a protocol addressing contingencies if water discharge exceeds the WPDES limits and shall present it to the Town for its review and approval.

4. Manure Delivery/Return Pipelines. To provide for proper oversight of the delivery system and address any spills or leaks in the system that could cause or contribute to pollution in the area, the Planning Commission believes the following conditions are reasonable and supported by substantial evidence:

- a. All pipelines shall be located within county utility easement right of ways or in private easements. Prior to any construction, Applicant shall provide the Town with documentation showing the right to use such right of way and any necessary approvals.
- b. The manure pipelines shall be monitored and shall have tracers located on them to assist in discovering any spill location.

- e. Applicant shall compose and submit to the Town for its review and approval of protocol addressing the steps to be taken to address any leak or other breach of the Manure delivery/return pipelines from the digester to its destination. Such protocol shall, at a minimum, include the number for 24-hour contact for reporting any leak or breach and the assets available to respond to such situation.
- f. Any brown water produced at the Site to be returned to a contributor shall be transported in the same manner it was received at the Site.
- g. The Town shall permit the use of those portions of the Mill Road utility easement for the gas and manure pipelines under the terms of this agreement.

5. Applicant shall be responsible for the cost of any spill, leak or breach in the gas extraction system and pipeline including the connection station, any spill or overflow of manure at the Site, any leak or breach of the manure pipeline or any other like spill or contamination caused by and attributable to the operation at the Site and shall take prompt action to remediate any such circumstance.

III. SECURITY

As the Site is located in a remote area, the Town's interest in protecting property and seeing to it that an operation dealing with high volumes of waste are secure and any vandalism deterred. The Planning Commission believes the following conditions are reasonable, supported by substantial evidence and address the foregoing municipal concerns:

- 1. There shall be fencing surrounding the operation.
- 2. There shall be securely locked gates and the Site shall have posted "No Trespassing" signs.
- 3. There shall be one entrance for ingress and egress to the Site.
- 4. The Site shall be monitored by camera surveillance.
- 5. The entrance and all roadways on the Site shall be of an impervious surface.

IV. TRAFFIC AND ROUTING

The amount of truck traffic required by this use, the transportation of waste production and materials on the roadways, the preservation of town roads and control over the volume and constituency of the waste at the Site prompt the following conditions which the Town believes are reasonable and supported by the evidence in the record.

- 1. Applicant shall prepare a plan and submit such plan to the Town for review and approval which shall show the routing for manure traffic on Town roads. The plan shall designate

all contributors to the operation and indicate the routes and number of daily trips. Truck traffic shall be consistent with the plan will be limited to the number and origin of trucks referenced in the plan (currently 55 to 59 truck trips per day). The Town anticipates and encourages the use of the communal digester by area farms as provided in the plan and recognizes that the number of truck trips may fluctuate. However the plan shall not be amended without the prior review and approval of the Town which approval will not be unreasonably withheld.

2. All truckers delivering and removing materials from the Site shall be on contract directly with the Applicant or with one of Applicant's contractors in a manner to allow Applicant to direct and control the truck operators.

3. Applicant shall require all of its' truckers to refrain from engine braking while hauling manure and while empty or transporting other materials back to the original site.

4. Any truck carrying dried fiber from the Site will be covered.

5. All other trucks carrying materials to or from the Site, other than those carrying dried fiber, will be closed tankers.

6. The Applicant shall provide to the Town for its review and approval a protocol for addressing spill clean-up and other complaints regarding the truck traffic

7. Applicant shall be responsible for the cost of any spill of waste or fiber during transport to or from the Site or when transporting fiber to locations outside the Town.

8. Prior to commencement of operations, the Town and Applicant shall enter into a road use agreement that shall provide, at a minimum:

a. The Town's consultant shall assess the condition of the Town roads to be used under this agreement and shall furnish a copy to the parties prior to the commencement of operations, the Applicant to pay the cost of the inspection.

b. The Applicant shall be responsible for cost of all road improvements and modifications as recommended by the Town's consultant.

c. The towns consultant shall make annual review of the Town roads used to assess the need for any maintenance or repair. The Applicant shall pay the cost of the inspection

d. The Applicant shall pay for all maintenance and repair of those portions of town roads used for the CUP at its sole cost. Such repairs to be made within a reasonable time of the town's demand for repair.

e. The agreement shall provide for security for payment and manner of performing improvements in a manner satisfactory to the Town.

f. The agreement shall address the issues in the form attached in exhibit 8.

V. ACCESS/GENERAL COMPLAINTS

To provide for a prompt and efficient manner of addressing citizen concerns of public safety and welfare and to minimize any damage that could be caused by a catastrophic event or public inconvenience, the Planning Commission believes the following conditions are reasonable and supported by substantial evidence.

1. Town officials, including the fire department, zoning administrator and building inspector shall be permitted to enter the premise for inspection purposes with 24-hour notice. The inspectors shall be accompanied by employees of the Applicant during any inspection.
2. Applicant shall acquire all equipment, provide all requested training and otherwise comply with all conditions expressed in the fire department condition demands (see attached exhibit 7) at Applicant's sole cost.
3. The system shall operate at 75 decibels or less as measured at the operations site line, except in emergency situations where repairs or other exigency may require machinery that is louder. Any such emergency or exigency shall be promptly reported to the Town.
4. The applicant shall draft and submit to the Town for its review and approval a protocol for addressing any noise or odor complaints concerning the operation of the facility. The plan shall include a 24- hour contact for such plan and a procedure under which the Town can properly review the situation and expedite a solution.

VI. COMMUNITY RELATIONS/DURATION

To provide for oversight of compliance with the CUP, provide for citizen input and clarify the parameters of the CUP the public interest requires the following conditions:

1. Applicant and owner shall participate in annual public meetings to discuss the operations of the CUP, its impact on the community, and its record of compliance with the CUP. This condition shall not prohibit the Town from demanding a meeting if there are allegations of a material breach of the conditions of the CUP or continued minor violations of the CUP, as determined at the discretion of the Town.
2. The conditional use permit shall be for a twenty-year duration and shall be subject to review every 5 years from the anniversary date of first operation to determine if there has been material breach of the CUP. Material breach of the permit may result in revocation of the CUP. Material breach may include:
 - a. Introduction of raw materials other than cow manure to the digestion process
 - b. Discontinuance of operations for a period of greater than 1 year where, as determined at that discretion of the Town, there are no efforts to restore operations
 - c. Failure to pay the PILOT
 - d. Repeated failure to follow protocols to the extent that the cure provision has been invoked

- e. Failure to construct the facility in substantial compliance with approved plans
- f. Permitting a required permit to lapse without correction within the cure period
- g. Substantial change in operations effecting material output without prior approval

3. The CUP shall include a breach and cure provision requiring compliance with the terms of the CUP and indemnification as provided in the required protocols. Failure to comply with any required clean up or duty provided in the protocols within the time provided by the cure provision shall allow the Town to pursue any remedy allowed by law.

VII. HIGH CAPACITY WELL

To protect the water source of adjoining property owners, the Planning Commission believes the following conditions are supported by the record and should be imposed:

- 1. If Applicant determines it needs to drill a high capacity well on Site, prior to drilling and placing the well Applicant shall have engineered a cone of influence study to determine draw effect on adjacent property owners, including the Town.
- 2. No high capacity well shall be constructed until The Town it is satisfied no remediation is necessary or that any necessary remediation has been adequately addressed.
- 3. Applicant shall be responsible for the actual cost of any remediation if necessary.

VIII. USE OF SITE/CONTINUED OPERATION AND INSURANCES

Substantial evidence shows that the digester system proposed by the CUP is of unprecedented size and combined technology indicated that if not used for the proscribed purpose there would be little, if any alternative use of the structures needed for the CUP. In the interest of securing productive use of the real estate in the Town and to avoid the possibility of abandoned or blighted conditions of the Site, and to provide for exigencies that may occur during the operations, the Planning Commission would impose the following conditions:

- 1. Owner and Applicant shall provide the Town with proof of the Applicant's permission to use the Site in the manner described in the CUP application.
- 2. Applicant and owner shall provide the Town with a bond or other security approved of by the Town sufficient in type and amount to assure that resources will exist to pay for the property and sanitary closure of the Site, and remediation of the Site if digester operations discontinue.
- 3. Applicant shall provide and maintain a pollution insurance policy for and in the amount of \$3,000,000 and a general liability policy for \$3,000,000 to pay the cost and environmental remediation, bodily injury and property damage, and cleanup costs in the event of

any accident at the digester or pollution created by applicant or third party on behalf of the applicant at the Site or any of the pipelines referenced in the application. The Town of Wrightstown shall be named as an additional insured in any such policy.

4. The Town shall be given notice of any proposed transfer of the Site or the CUP and shall review the CUP to determine if the transferee will have the ability to comply with the CUP prior to any such transfer. Transfer shall not be unreasonably withheld.

IX. ADMINISTRATIVE COSTS AND PILOT

The cost of processing this permit and overseeing the operation in the interest of the public health, welfare and safety are attributable solely to this project and should not be paid by the general tax levy. The Planning commission believes the record of the review of this process supports imposing the following conditions:

1. To the extent that the operation, real property and assets thereon are exempted from real or personal property taxes, the Applicant shall pay the Town a payment in lieu of taxes (PILOT) equal to the amount of the Town's share of taxes on real estate and improvements if they were not exempt from taxation. (estimated at \$177,000 for 2019). The payment shall be made in a single installment within 60 days of notice from the town of the projected mil rate for the next year.

2. In addition to any PILOT, the Applicant shall pay an amount not to exceed \$40,000 in one payment prior to the commencement of construction, any and all administrative costs suffered by the Town in processing this conditional use application, including actual attorneys' and engineer fees expended, actual costs of publication, and any other costs actually incurred by the Town in processing this CUP. The town shall submit invoices showing the costs incurred.

3. In addition to any PILOT, applicant shall pay up to \$24,000 per year toward costs incurred by the Town in administering the CUP, including, specifically, costs of engineering, review and advice.

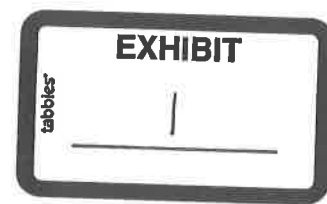
Performance of Conditions:

The Applicant has been present at all the meetings where the Planning Commission reviewed exhibit 6 and discussed the conditions to be imposed. The Applicant has agreed to meet all of the requirements and conditions specified above.

Recommendation:

Based on the foregoing, the Planning Commission recommends the granting of the CUP to the Applicant and Owner for the Site subject to the foregoing conditions; further that the CUP shall

be reduced to writing and executed between the parties prior to commencement of construction activities. A memorandum of the CUP may be filed with the Brown County Register of Deeds.

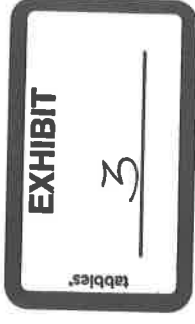


Meeting History:

- Plan Commission met 6 times on the issue including one on site view
 - All meetings duly noticed and posted
 - All meetings were recorded and are available through the clerk's office
 - The following is a synopsis for the purposes of the record of the public hearing
- **Monday July 1** meeting heard the presentation of the Applicant
- **Monday July 8** meeting to view Crave Brothers Farm in Waterloo and Majestic Meadow Dairy in Sheboygan Falls
- **Tuesday July 16** met to discuss observations from the view and gather questions. Several citizens were in attendance and were allowed to speak
- **Monday August 5** met to address the questions presented by the citizens, a communication from the county including four issues and questions submitted by a board member. A representative of the Department of Natural Resources and responded to the questions presented. Citizens were again allowed to address the commission. The commission determined that the public hearing before the Town Board could be scheduled.
- A class 2 notice of the public hearing was duly posted for Wednesday September 4.
- **Wednesday August 21** the board met and discussed a draft of a chart that synopsized the concerns raised and evidence collected so far and the possible conditions that staff would recommend if the CUP was approved. This chart would form the basis for the Zoning Inspector report in the Public Hearing so the Commission made several comments and suggestions and set up a meeting for September 3 to review the chart before the Public Hearing.
- **On Tuesday September 3** the Commission met and made several modifications of the chart, directing a few others. The planned presentations for the public hearing was also discussed.

Documents of Record

- During the review of this matter, many documents were collected and reviewed by staff for discussion before the board.
 - For example, the entire file of the Town of Holland regarding their review of the B C Organics proposal for property within Holland was received and reviewed by staff.
 - All those records are available on the Town web site or at the Clerk's office for review
 - Many of those documents were forwarded to the Commission.
 - The following is a list of the documents staff forwarded to the Commission
- The CUP application form of BC organics
 - I note for the record that the application is for land within the Agricultural Farmland Preservation Zone (AG-FP)
 - The AG-FP lists as a permitted conditional use at Article XXVIII D (2) (b) 10 of the Town or Wrightstown Zoning Code :
 - An ethanol plant, bio-diesel plant, communal digester, pelletizing plant or other facility that processes raw agricultural commodities, agricultural by-product or agricultural wastes (received directly from farms) to produce bulk fuel or other bulk products.
- The materials accompanying the application
 - Application Notebook
 - BC Organics Project summary documents
 - Community Digester Economic Impact Analysis
- The Town of Wrightstown CUP supplement form
- The Town of Holland January 7, 2019 plan commission packet including among other things
 - BC Organics Application
 - Holland Zoning Ordinances
 - Memo from Town of Holland legal counsel
 - Correspondence between attorneys
 - A terms proposal
 - Correspondence from a 3rd attorney
 - Report of an Environmental Engineer
 - The Recommendation of the Town of Holland Plan Commission
- May 20 2019 Report of Town of Holland legal counsel and attachments including, among other things:
 - Proposed conditional use agreement
 - The Draft business plan of the Springfield Digester Project in Dane County
- The packet from the August 5, 2019 meeting of the Wrightstown Planning Commission
 - Questions collected at July 15 meeting, raised by county and raised by a board member
 - Opinion of City Assessor on value impact
 - Initial route proposal
 - DNR summary document on Town of Holland proposal
 - County RFP pertaining to Town of Holland Proposal
- Updated route proposal
- Final Fire Department Conditions and Equipment List
- USDA 9003 Loan Guarantee Feasibility Analysis
- Final Draft of the Conditional Use Analysis Chart
 - The drafts from the August 23 and September 3 meetings are also available



Conditional Use Analysis

Issue	Concern	Evidence/pro or con	Condition/Solution	Evidence of Ability
1. Processing 800,000 gpd manure treatment is a remarkable and unprecedented size	<ol style="list-style-type: none"> Pollution at site spillage at site System larger than ever tried before 	<ol style="list-style-type: none"> Berm to contain-completely enclosed site at least 110% of largest single tank capacity- Monitoring Alarms No evidence that volume is a concern to processing, only to potential of pollution if spilled While this is a large concentration of manure, it is less than some of the farms in the area hold in their tanks DNR and Tetra Tech say the project is based on proven technologies 	<ol style="list-style-type: none"> Site plan subject to town and DNR approval to contain any spill Spill compliance plan including notice and restoration 	<ol style="list-style-type: none"> Purpose of the operation Site plan review should require as condition
2. Solids transferred from site	Traffic hazard	Dry material coming from trucks could cause traffic issue	<ol style="list-style-type: none"> Covered truck removing solids Dry material routing and recipients Spill response plan 	Require as conditions
3. Phosphorous and other pollutants	High concentration of phosphorus and other pollutants at site	<ol style="list-style-type: none"> There will be a high concentration at the site 	<ol style="list-style-type: none"> Containing manure as provided in Issue 1 is essential 	<ol style="list-style-type: none"> WPDES permit DNR water quality permit

		<p>2. No new phosphorus is being created</p> <p>3. Phosphorus will potentially be removed from area as solids transferred from site</p> <p>4. Water returned to site should be phosphorus free</p>	<p>2. Compliance with operations plan should address any other concerns.</p>	<p>3. Redundant analysis</p>
4. Manure Pipeline security and maintenance	<p>1. 70% of Manure volume to be delivered by pipeline</p> <p>2. Use of ROW/utility easement</p> <p>3. Construction issues</p> <p>4. Restoration issues</p>	<p>1. Volume admitted and amount is substantial</p> <p>2. Potential for odor and rupture-</p> <p>3. Otherwise lowers need for truck traffic</p>	<p>1. Pipeline plans</p> <p>2. ROW agreement</p> <p>3. Pipeline route restoration after construction</p> <p>4. List of pipeline users</p> <p>5. Notice of any change of pipeline users</p> <p>6. Immediate notice of any rupture or spill</p> <p>7. Insurance for pollution to include pipeline spills/ruptures and cleanup</p> <p>8. Require pipe line permit if town road crossed</p> <p>9. Require tracers to locate any ruptures quickly</p>	<p>1. Subject to WDNR permit</p> <p>2. Require ROW/utility easement agreement</p> <p>3. Require insurance and rider naming Town as additional insured</p> <p>4. Applicant to register pipelines with diggers hot line and administer any locates and breaches</p> <p>5. The foregoing shall be conditions to the permit</p>
5. Site Security	<p>1. Vandalism/property access</p>	<p>1. Remote/secluded site</p> <p>2. Nearest residence over ¼ mile</p>	<p>1. Locked site when no operators present</p> <p>2. Camera at entrances</p>	<p>1. Site plan review</p> <p>2. Other conditions as listed</p>

	2. System damage/spill or operation corruption		3. Secured entry- one entry 4. Lighted site	
6. Constituency of materials to be treated	<ol style="list-style-type: none"> 1. What is to be treated 2. Where will the waste material come from? 3. How will we know what is being treated? 	<ol style="list-style-type: none"> 1. What comes in will affect what goes out- see Holland report and objections 2. Substrates would require additional trucking and additional routes 3. Knowing where the waste is coming from assists in addressing the concerns 	<ol style="list-style-type: none"> 1. Allow manure only, no substrates or other waste 2. Require up to date list of contributors. 3. Any additional contributors reported to Town- limit to participating farms only 4. Local farmer priority for excess capacity- reported to Town 	<ol style="list-style-type: none"> 1. Require as conditions subject to quarterly review 2. Any deviation to this process subject to daily liquidated damage provision
7. 1800 MMBtu/day Methane	<ol style="list-style-type: none"> 1. Explosion on site 2. Odor at site 	<ol style="list-style-type: none"> 1. 4000 gallons of methane max on site per day 2. Highly flammable 3. Potential to build up pressure at site 4. Controlled pressure not a concern 5. Tetra Tech states this is a proven technology 	<ol style="list-style-type: none"> 1. concealed flare to release pressure and minimize odor 2. Anti-combustion motors to minimize possibility of explosion 3. Anaerobic system- little air to combust- should minimize odor 4. Building automated for 24/7 monitoring 5. low PSI to pipeline 6. Completely enclosed system 	<ol style="list-style-type: none"> 1. Air quality permit/ WPS permit 2. Redundant monitoring 3. Constructed and operation in accord with building and operation plans as submitted to Town and DNR 4. Pollution and Liability Insurance 5. Prompt reporting and response required as a condition

			7. Emergency response plan 8. Post insurance to cover costs 9. Contact for 24/7 odor complaints	6. Require foregoing as conditions 7. State approved plans through DNR and DoC
8. Gas will leave site by pipeline	<ol style="list-style-type: none"> 1. Danger of explosion in pipeline route or connection site 2. ROW proximity of utility easement 3. Pressure station 4. Expediency of response 	<ol style="list-style-type: none"> 1. Already WPS gas lines present 2. Connection station will be required 3. Common technology used by County for neighboring land fill 	<ol style="list-style-type: none"> 1. ROW utility permit and agreement with Town 2. Inspection and review of pressure station 3. Post pollution and liability insurance 4. 24/7 monitoring of pipeline and connection 5. Tracers required to assist location of any leak 6. Train emergency responders 	<ol style="list-style-type: none"> 1. WPS permit 2. Require conditions/solutions
9. 400,000 gpd of waste water may be produced per day	<ol style="list-style-type: none"> 1. What if not returned to contributing farms 2. Volume Flooding 3. Water quality 4. Proximity of east river watershed 5. Untried volume- will the system work 	<ol style="list-style-type: none"> 1. Up to 400,000 gpd at worse case 2. RO system designed to produce cleaner effluent than water in the stream 3. Water will have to be hardened 4. proximity to east river and Pike breeding habitat 	<ol style="list-style-type: none"> 1. Water waste water discharge alternative plans 2. Redundant testing of the effluent 	<ol style="list-style-type: none"> 1. DNR WPDES and Water Quality permits 2. Redundant Town testing

		<p>5. DNR says this type of system is time tested technology</p> <p>6. This contingency would come into play only if the system did not work properly- it is designed to return the water to the contributing farms.</p>		
10. Quality of Effluent- may affect wildlife	Wildlife habitat/wetlands might be effected as there is a pike habitat near the site	<p>1. Water will be hardened before release</p> <p>2. Water will be at ambient temperature when released.</p>	Concerns should be addressed in the DNR permit process	<p>1. Require permit compliance</p> <p>2. Effluent independently tested</p> <p>3. Redundant testing</p>
11. Effect of water discharge on recreational use	Water could melt snowmobile trails	<p>1. Weather could have same effect</p> <p>2. Water will be at ambient temperatures if released</p>		
12. Traffic and Congestion	<p>1. 51 truck trips per day required for operation</p> <p>2. Road condition at access site</p> <p>3. Road Spillage</p> <p>4. Effect on Town Roads</p>	<p>1. Likely to reduce current truck traffic as significant amount is being piped</p> <p>2. Will however concentrate some traffic to site</p> <p>3. Heavy truck usage on certain town roads</p> <p>4. May be spills, particularly in proximity to site</p>	<p>1. Route designation</p> <p>2. Contributor designation</p> <p>3. Immediate notice of spill</p> <p>4. Prompt clean up</p> <p>5. Haulers to be responsible to Operator</p> <p>6. Black top entrance and interior roads</p>	<p>1. Road clean up controls- 24 hours</p> <p>2. Post insurance</p> <p>3. Highway notice/maintenance Agreement</p> <p>4. Conditions/ solutions</p> <p>5. Any change of provider or route will be reported to and reviewed by the</p>

					Town as a precondition to the change.
13. Noise of operation	<ol style="list-style-type: none">75 db at property line-24 hour hauling by truck	<ol style="list-style-type: none">Admit 75 db at property line- a blenderSite fully encompassed by treesIn a depressionClosest residence ¼ mileThey intend 24 hour service and some weekend workTruck traffic can be noisy	<ol style="list-style-type: none">Not to exceed 75 DB measured at the operations site line as defined in the site planNeed to monitorNo Jake breaking	<ol style="list-style-type: none">Less than 75 db as conditionNo jake breakingSubject to periodic checks and noise ordinance	
14. Light from site	Will it be night sky compliant	<ol style="list-style-type: none">Designed to be night time compliant and faced toward siteNearest residence quarter mileSecurity will require it so be well lit	<ol style="list-style-type: none">Site plan approval by town requiredLighting limited to building, driveway and compliant sign	Impose condition/solution	
15. Ingress and Egress and local road	<ol style="list-style-type: none">Driveway durabilityDust from site	<ol style="list-style-type: none">considerable truck traffic concentrated in areadust from traffic	<ol style="list-style-type: none">Site plan reviewWilling to do all blacktop roads	Conditions and solutions	
16. Compatibility with adjacent land use	<ol style="list-style-type: none">Site encompassed by property of an owner/contributor to NorthAcross the street is a land fill to South	<ol style="list-style-type: none">Pretty good siteMinimize issues with noise, light and traffic conditions			

	3. Closest residence 1/4 mile to the East and 1/2 mile to the West			
17. Closure/Abandonment	<p>1. What happens if the Company folds?</p> <p>2. Structures on conducive to other uses</p>	Applicant states there is a bond to restore property if there is default	<p>1. Require proof and maintenance of the bond</p> <p>2. Required assurance of restoration within 12 months of discontinuance</p>	Add to conditions
18. DNR ability to enforce	Concern that DNR may be able or neglect to enforce it's permits	<p>1. Concern raised over spill last year- no one cited</p> <p>2. No assertions that there has been laxness in permit enforcement</p> <p>3. Promptness of response</p>	<p>1. Set up Town authority to address spills, monitor operations, inspect and verify sampling</p> <p>3. Set up contact numbers for expedient response</p>	Condition on the redundant review and response mechanism
19. Impact on Property Values	<p>1. Will decrease property values in the area?</p> <p>2. Will decrease property values area wide</p>	<p>1. No support given</p> <p>2. Report of Town assessor to the contrary</p> <p>3. Note presence of land fill</p>		
20. High capacity well	<p>1. Intend to drill a high capacity well on site</p> <p>2. Resident within 1/4 and 1/2 mile</p> <p>3. Town well affected?</p>	<p>1. Intent is to use it primarily for start up</p> <p>2. Neighboring high capacity well did not impact Town well.</p>	<p>1. Cone of influence study will be required.</p> <p>2. Any draw effect will be addressed prior to operation</p>	<p>1. Withhold issuance of the conditional use permit until study forwarded and deemed satisfactory to town</p>

					2. After start up monitor to determine any impact 3. Applicant shall be responsible for actual cost of remediation if necessary.
21. Disaster control and insurance	1. Explosion 2. Spill 3. Environmental contamination 4. Restoration	1. Presence of highly combustible material 2. Presence of high amounts of manure 3. High amount of water in various levels of purity 4. pipelines	Require 3 million in general liability insurance for fire or clean up, 3 million for pollution and street and pipeline maintenance		1. Impose as condition with annual update and notice for any change or lapse 2. Required named insured 3. Require certificate on file
22. Culvert size	Volume of water if maximum released might overwhelm culverts	169 cu per second intermittent flow of stream. discharge at worst case would be 0.6 cubic feet per second			
23. Concentrated liquid fertilizer	Brown water could be available- how would the delivery be accomplished	Recycles the nutrients	Same method of manure delivery used to deliver brown water. - trucks cycled		Impose as condition
24. Site Plan Review	Large industrial producer with some potentially harmful processes	1. Volume of manure 2. production of gas 3. production of effluent 4. site ability to access	1. All building plans 2. a landscaping and road plan 3. light plan 4. signage		Site plan subject to Town approval and conditions

			5. assurance of compliance with operation plans and volumes	5. Pipelines in and out	
25. Costs associated with administration	<ol style="list-style-type: none"> 1. Emergency provider's readiness, equipment and recertification 2. Initial set up of review and reporting procedures 3. Day to day administration and testing 	<ol style="list-style-type: none"> 1. Site emergency readiness 2. Immediate redundant testing ability. Actual cost of administration- meeting costs, attorney's fees 3. Continuing education/training and ability to provide service 	<ol style="list-style-type: none"> 1. See attached Fire Department condition sheet 2. Actual administrative costs (actual amount of attorney's fees and meeting fees) 3. \$2000.00 per month for testing and monitoring review. 	<ol style="list-style-type: none"> 1. Require as conditions 	
26. Complaint procedures and responsiveness	<ol style="list-style-type: none"> 1. Access for Town officials 2. Procedures to assure prompt responsiveness to emergencies 3. Procedure for annual review and citizen input 	<ol style="list-style-type: none"> 1. Access needed to inspect- public safety 2. Response time tied to environmental impacts and traffic safety depending on location 3. Magnitude of development and consequential concerns need to be addressed 	<ol style="list-style-type: none"> 1. 24 hour access agreement- including all inspections 2. Emergency contact system for neighboring properties for fire or spill notice 3. Notice of contact for emergency issues on a 24/7 basis 4. Semi-annual meeting with citizens- noticed as a public meeting 5. Set up contact protocols 	<ol style="list-style-type: none"> 1. Impose the conditions and solutions 	

27. Review	Frequency of review	Every 5 years	Publicly notices review Full review of process May order reasonable modifications Revocation upon substantial breach of conditions	Condition/solutions Include review procedure in conditions for schedule review and substantial breach.
28. Transfer/Expanse	<ol style="list-style-type: none"> What if a less reputable operator seeks to take over What if there is a desire for substantial expanse. 	<ol style="list-style-type: none"> Expanse limited by site conditions The conditions run with the land Town has right to be sure the operator is willing and able to perform the CUP 	<ol style="list-style-type: none"> Notice upon change of use or ownership Notice of intent to transfer or expand 6 months prior Subject to new CUP 	Impose as condition
29. Permits	Required permits obtained before operation	Permits Required <ol style="list-style-type: none"> WPDES WDNR air quality WDNR stormwater permit WDNR erosion control permit WDNR Chapt. 30 permit WDNR well permit POWTS (Brown County) Shoreland permit (Brown County) WPS pipeline Approval 	<ol style="list-style-type: none"> All maintained and timely renewed Notice if a violation All monitoring data subject to review 	<ol style="list-style-type: none"> All permits and conditions and solutions Any permit violation treated as a breach and subject to cure.

		10. WDC building approval 11. DATCP scal per mit 12. Wrightstown Building permit		
30. Permit data Review	<ol style="list-style-type: none"> 1. Assisting timely review and confirmation of DNR and other state entity reviews 2. Current and efficient regulation of this large use 	<ol style="list-style-type: none"> 1. Timely review of data and feedback should minimize issues 2. Volume of the operation makes timely identification of problems more pressing 	<p>Redundant testing of:</p> <ol style="list-style-type: none"> 1. Effluent <p>Monitoring of:</p> <ol style="list-style-type: none"> 1. Gas pressure at site 2. Gas pressure at connection site 3. Effluent discharge 4. Review by Robert E Lee 	Conditions and solutions
31. PILOT	Cover continuing administration costs	Actual cost attributable to property if taxed (town portion)	<p>PILOT to be paid by October of the year preceding the property tax based on that year's mil rate.</p> <p>See fire department list</p>	Part of CUP agreement
32. Emergency Response	Preparing the emergency responders	<ol style="list-style-type: none"> 1. Special equipment and training for confined space entry 2. Access to site 3. Continuing training 4. Updating equipment 		Add as conditions
33. CUP enforcement process	What happens if the conditions are not	<ol style="list-style-type: none"> 1. Truck routes 2. Contributors 3. Type of waste 	<ol style="list-style-type: none"> 1. Liquidated damages for those issues not easily measured 	<ol style="list-style-type: none"> 1. Impose as condition

	<p>honored and the breach is not substantial?</p>	<p>4. Lack of required contacts</p> <p>5. Failure to respond to spills</p> <p>6. All conditions run with the property</p>	<p>2. Actual cost of response for spills</p>	<p>2. Set out a procedure for review and enforcement.</p> <p>3. Where applicable breach and cure provisions will apply</p>
--	---	---	--	--

REVIEW OF PUBLIC COMMENTS

At the public hearing of September 10, ten people spoke. Several of the people who spoke had their questions directly answered. Some questions remained at the end of the public hearing and response or the status of the response are below:

I. DNR AND REL PARTICIPATION

- A. Ms. Rombeck-Bartels of the DNR was present and addressed questions at the hearing.
 - 1. As were 2 representatives of Robert E Lee and Associates, the Town's engineers (REL)
 - 2. Some questions raised at the Public Hearing were not addressed
- B. Ms. Rombeck-Bartels however sent a document addressing some of those issues (see EX 1)
- C. A representative of REL should be at our meeting to address some of the questions raise at the hearing regarding the gas extraction system and the reverse osmosis questions.

II. ANN SHIBLER

- A. Claim that Mr. Kalny said he would obtain list of digester operations and complaints from Alexis Peters
 - 1. Ms. Martzal made a request for that record to Ms. Peters on September 10. Ms. Peters replied she has no document responsive to the request. (See EX 2)
 - 2. What direction should be go with this.
- B. Ms. Shibler also believes the CUP would result in the decrease in property values. She presented 2 articles (EX 3 and 4) that are attached, in support of her position. Ms. Shibler also referenced Mary Gawryleski of the DoR suggesting that Mary agrees that this digester will reduce property values
 - 1. As to the articles
 - a. Pig farm issue factually distinguishable
 - b. Only effected one property
 - c. Case is an anomaly- only one of its kind to date

- d. Location is a factor here
- 2. CAFO article speaks of a situation that already exists in the area
 - a. This development is about ½ mile from a 6000 cow mega farm
 - b. There will be a land fill across the street
 - c. Approximately 120,000 cows are in Brown County
 - d. This type of operation was specifically solicited by the state to address some of the concerns.
- 3. To the extent that Ms. Gawryleski believes this operation with drive property values down,
 - a. She stated that she was not familiar the situation
 - b. She stated value decreases are rare – referring to the pig farm case as an anomaly
 - c. She stated that she would not speculate on values- going through the evaluation and assessment process
 - d. She suggested the best resource for that type of question is the local assessor.
- 4. Ms Shibler also complained that the amount of truck trips had increased
 - a. Presently the CUP conditions increase will be subject to review.
 - b. 51 trips a day is not outrageous and is less than would occur without the digester

III. LINDA CLEMEDSTON

- A. Questions why the City did not hire an independent engineer to help with the analysis as was done in Holland
 - 1. We have Holland's data and have reviewed it
 - 2. Those reports formed the basis for considering conditions
 - 3. We have REL assisting on the gas issue and reviewing issues raised at the public hearing
 - 4. We have had DNR representatives present to answer questions at a plan commission meeting and the public hearing

5. The DNR, Tetra Tech and now REL, all state the technology is common place and the volume should not be a concern.
 6. We are relying on multiple reports and opinions of professionals.
- B. Ms. Clemedston questions the financial feasibility of the proposal; She questions what happens if the IRNs and tax credits for this program are withdrawn in 3 years.
1. There is no evidence before us that the IRNs or credits are in danger of being withdrawn
 2. Tetra Tech found the project financially feasible in a report to a bank for financing purposes
 3. The Wisconsin Public Service Commission found this project worthy of a \$15,000,000 grant.
 4. Note this is not a development agreement with the Town- the Town does not own this property
 - a. The Town has not, for any other conditional use, considered the financial feasibility
 - b. There is an interest in the Town not creating a black box development- consequently assurance that the site would be remediated if the operation is abandoned is reasonable and has been inserted.
 5. Saying that the operation is not financially feasible runs contrary to the evidence we have and requires the speculation that in 3 years the law will change.
 6. A condition providing funds for restoration appears to address this concern and is included in the conditions.
- C. Ms. Clemedton's final comments dealt with assertion that if the operation comes under financial stress the Applicant might reintroduce substrates; when pointed out that the CUP will require manure only as a material condition, Ms. Clemedton's responded that the Applicant could sue the Town to force the manure only condition to be removed
1. I did not find any precedent where a court required a material condition in a CUP be amended
 - a. Normally courts take pains to avoid substituting their judgement for a municipality

- b. The court would have to say that the Town would have to compromise a condition imposed in the interest of public health and safety to support the financial feasibility of a private entity.
2. Again if there is a restoration bond, the public interest in this matter seems to be addressed.

IV. MATT GIESE

- A. While repeatedly stating he does not oppose the digester, Mr. Giese is concerned that reverse osmosis does not work on cow manure and therefore there would be water issues at the sight
 1. The discharge of effluent is intended to be minimal- it is the 3rd option (See EX1)
 2. DNR thinks the Farmers will want the water back
 3. DNR listed several operating permits issued for RO systems
 4. REL concurs that the technology should work.
 5. No documentary evidence was offered or referenced
 6. There is no explanation of
 - a. Why the water could not be piped back
 - b. Why the farmers would not want the water back
- B. Mr Giese is also concerned about the amount of estrogen that will be in the water
 1. DNR responded that there are no regulations on estrogen
 2. A requirement here would apply a regulation that has not been promulgated by the state without any documentary evidence.

V. DARIEN VREGTENHIL

- A. Darien raised questions concerning the taxes exempt status of the operation. While those questions were addressed he raised some questions about the industrial nature of the operation that merit some consideration. Article XXVIII D (2)(a) provides:

(a) The Town Board may issue a conditional use permit for the uses under par. D.(2)(b) if all of the following apply:

1. The use supports agricultural uses in the farmland preservation zoning district in direct and significant ways, and is more suited to a farmland preservation zoning district than to an industrial or commercial zoning district.
2. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
3. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
4. The use is reasonably designed to minimize conversion of land, at and around the use site, from agricultural use or open space use.
5. The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
6. Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

- B. While staff believes each of these requirements are met by the proposal, Mr. Vreugtenhil's comments in this regard should be addressed in the Board's findings.

VI. MARTY ADAMS

- A. Asserted that county code provisions could not be used to address agricultural facilities and were unenforceable.
1. There is no intent to attempt to enforce county codes, and it is questionable whether they could be
 2. The intent of the planning commission has been to have a complaint process that requires any such issue to be promptly addressed
 3. Any noise or odor issues would be addressed through contract law
- B. Note the county and state odor provisions deal with public nuisance- not likely at that location

1. The land fill also is a likely odor producer
2. There is a 6000 cow farm in the immediate vicinity
3. Applicant's system is designed to minimize odor
4. The remoteness of the site is likely to minimize noise issues.

VII. STEVEN DESLAURIERS

- A. Notes the Act 67 has limited the ability to refuse and impose conditions on conditional use permits.
- B. Stated that there has been a problematic operator- Clear Horizons.
 1. Stated that some of the principals in BC Organics also were at one employed or otherwise associated with the management for Clear Horizons
 2. BC Organics denied any of the Principals were employed by Clear Horizons at the time of the complaint.
 3. Note some discussion in EX 1.
- C. At the request of a board member a public records request has been filed with the DNR although the response has not yet been received. (see EX 4)



Staff Review of E-mail of Ann Shibler dated September 12, 2019

Ms. Shibler sent an e-mail requesting that it be supplied to all Board and Plan Commission members. As we have done in the past, staff has seen to it that all communications have been forwarded to the Plan Commission and Board for discussion and comment at its meetings.

Ms. Shibler comments on 6 items. Each will be addressed below:

1. Personal Asset Exposure and Risk for Town Officials

All Planning Commission Members and Board Members need to check with their family attorney before voting. If a potential risk has been publically evidenced and that risk ignored with no provisions to safeguard against it in the CUP, town officials can be held personally liable and possibly sued by anyone in the town whose person or property has been injured or harmed. It would be wise and prudent to contact your own attorney about this possibility ASAP.

- A. Comments at second paragraph unprecedented with regard to a conditional use granting issue
- B. The likelihood of this being applicable after Act 67 is even more remote as the standard for decisions is substantial evidence
- C. With regard individual liability, the law recognizes and protects municipal officials acting in good faith from personal liability so long as they are acting in the exercise of legislative functions.
 - 1. § 893.80(4) provides in relevant part: (4) No suit may be brought against any ...governmental subdivision ... for the intentional torts of its officers, officials, ... nor may any suit be brought against such ... subdivision or ... or against its officers, officials, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.
 - 2. Granting permits is a quazi judicial function.
- D. The Town has acts and omissions coverage: see EX 1
- E. There is also a provision that requires the Town to defend and indemnify public officials for any amounts over the insured level
 - 1. 895.46(1)(a) provides in relevant part: If the defendant in any action or special proceeding is a public officer ...and is proceeded against in an official capacity or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employee and the jury or the court finds that the defendant was acting within the scope of employment, the judgment as to damages and costs entered against the officer or employee, ... in excess of any insurance applicable to the officer

or employee shall be paid by the state or political subdivision of which the defendant is an officer or employee.

2. 895.46 requires the municipality to provide legal counsel for the action.
3. With the 7 public meetings and the extensive record created in this matter there is no reasonable argument you have not been acting within the scope of your authority.

2. Financial Responsibility for Cleanup and/or Dismantling

In case of catastrophic failure of the digester or bankruptcy of BC Organics/Dynamic whose assets are in LLC holding companies, as are the landowners, Brown County (call or email Treasurer's office) says that all costs for any cleanup or dismantling of the site would revert back to the governing body, the Town of Wrightstown. Cleanup and/or dismantling will take millions, so a large bond should surely be part of the CUP. If you think this is a rather far out possibility, then you should have no problem adding ironclad protection for taxpayers of the town to the CUP.

- A. As per our discussions at 2 meetings this issue will be addressed by a condition in the CUP
- B. If the operation were to discontinue the property owners (the LLC is Wiese family members) would have to default on their taxes for at least 3 years and the county would have to refuse to institute a tax sale. That result is unlikely for several reasons
 1. The property owners, who operate a proximate farm with well over 6000 cows, would still have to dispose of the waste.
 2. As these state of the art digesters would be on site, there is no logical reason to conclude the property owners would not continue to use the digesters for that purpose of treating the cow waste.
 3. The speculation that the plant would be abandoned by the property owners after a \$60,000.000.00 investment has been made.
 4. The state of the art, stainless steel digesters at a minimum would be valuable and usable assets even if gas was not being extracted.
- C. If for some reason the property owners refused to use the assets on their property, the County could take the property and sell it.
- D. In a county with over 120,000 head of cattle (the waste treatment equivalency of a City of over 720,000 people) it is much more reasonable to speculate that there

might be a party interested in purchasing the property and use the digesters than that the stainless steel will biodegrade and become a nuisance.

- E. If no one bought the property, or if the county refused to try to take it, there is the possibility it would become the City's problem. While as the Applicant argued at our meetings the abandonment possibility is speculative, the Commission has determined to have a bond or deposit to address that possibility as a condition. (see item 17 of Conditional Use Analysis)

3. Fines, Penalties, Etc., for violations

As the DNR, per open records request shows, is powerless to address odor and noise violations, the ToW must build in deterrents that have teeth, especially concerning odors that are an indication of problems at the digester and possible leaking of toxic gasses. Toxic gas meters are easily available and quite inexpensive and sync with a phone app.

- A. As we discussed at the Commission meetings and evidenced in the Conditional Use Analysis Chart, the Commission never anticipated using the DNR, or County as the first responder to noise and odor claims if they did indeed arise. The thought has always been to use contractual remedies to address any verifiable claims.
- B. The fact is Brown County has a large population of cows and mega cow farms. Odor problems exist. The placement of a land fill will further contribute to the problem
- C. This automated anaerobic facility is designed, intended and partially funded by the state to help address the waste created by those existing uses.

4. Ground Water/Well Water Contamination or Loss

During times of flooding that coincides with a manure spill, contamination of ground water and wells is a distinct possibility. Again, homeowners should not have to carry the burden of the costly expense of replacing a well. Any contaminated wells or loss of water due to the project's high capacity well and usage must be covered by the CUP in favor of taxpaying residents with the developer/applicant making financial reparation.

- A. I would be interested in seeing any evidence that this project increases the possibility of ground water contamination or flooding in the area. I did not see any documents showing that possibility in the Holland report nor has that issue been raised by the DNR or REL
- B. If the system does not work, it can be shut off.

1. The system reroutes water and gives alternative distribution of the water. The DNR WPDES permit also addresses this issue.
 2. The design of the system diverts liquids from wastes that would otherwise be spread on fields or stored in tanks in the same watershed as the operation.
- C. That being said, the commission has recommended requiring as conditions
1. pollution insurance
 2. reporting requirements for clean-up of any spills and remediation requirements.
 3. Town to monitoring of effluent discharged to the East River, as will the DNR.
 4. The CUP will not issue until a cone of influence study for the new well is approved by the Town and any remediation accomplished.

5. Property Values

It's time for the ToW to get on board with what is now DoR precedence and lower assessments for nearby neighbors of both CAFOs and digesters. The developer who stands to pocket millions of dollars can easily make up the difference. Perhaps increasing the \$177,000 per annum payment from the developers, which is ridiculously low in the first place, to a more reasonable \$500,000.00 per annum would be more sensible.

- A. The DoR precedent is a lone case
- B. The CAFO issue is already there- this operation is designed and intended to lessen the effects of a CAFO-
- C. whether property taxes should be lowered for others is not an issue to be considered in the CUP process
- D. Any impact of this operation is obviously mitigated by the fact that a land fill is immediately adjacent.
- E. There are few properties proximate
- F. The CUP process is not to be random- the PILOT offer is tied to a reasonable factor

6. NEW (Strange this was never brought to the public's attention): As there will soon be a county landfill directly across the road from the digester, there is the distinct possibility that the methane from the landfill would be piped to the digester and scrubbed for delivery into the gas line. This would in turn change the designation of current zoning from Ag to Industrial, opening up a whole new can of worms for the ToW to deal with concerning the digester and all the conditional uses, permitting, discharge limits, etc. This must be addressed now, before the CUP is approved by the Town, and a condition introduced that would prohibit this action. **Perhaps you have already discussed this privately, or with the County. Please make public if so.**

- A. The reasons the Town has not brought this to anyone's attention is because the Town did not hear of this "distinct possibility". This matter has never been discussed by anyone at the Town that staff is aware of.
- B. This "distinct possibility" of combining the gas on the Site is not part of the CUP and would have to be included as part of the plan to be included in any CUP issued.
 - 1. At present this item is speculation without a source or documentation to support it.
 - 2. The implication that this matter has been kept from the public has no support in fact either.
- C. The Applicant claims that combining the gases contaminates the gas they are producing and would lower the value of the gas.
- D. This issue has been addressed as it is not included in the CUP it cannot be added without amendment.

CONDITIONS

General

1. All construction and operations must be in compliance with the representations found in the Application. Of particular concern, without limitation by enumeration, are the following:
 - a. The raw material used in the digestion process shall be cow manure only. There shall be no other raw materials brought to the site, nor shall there be any other system or procedure used at the site that is not described in the Application.
 - b. The digestion system shall be anaerobic. It shall also be covered.
 - c. Seventy percent (70%) of the manure will be pumped to the site; the remaining manure will be brought to the site by truck in compliance with a plan disclosing the contributing locations, their approximate load, and the route to be taken to and from the site.
 - d. Gas pressure at the site at the gas line connection point and along the gas pipeline shall be monitored.
 - e. The anaerobic system shall be driven by anti-combustible motors.
 - f. All aspects of the design of the structure, including materials to be used, shall be adhered to, specifically including the passive containment system designed to catch and retain 110% of the largest single tank capacity, unless a higher requirement is made by a reviewing entity.
 - g. The manure processing shall not exceed 800,000 gpd, methane on site shall not exceed 1800 MMBtu per day, effluent discharge shall not exceed 400,000 gpd.
2. The operation shall be in full compliance with all applicable state, federal and local laws.
3. Prior to the commencement of construction, applicant shall obtain all required permits, including without limitation by enumeration the following:
 - a. WPDES permit.
 - b. WDNR air quality permit.
 - c. WDNR storm water permit.
 - d. WDNR erosion control permit.
 - e. WDNR Chapter 30 permit.
 - f. WDNR well permit.
 - g. Brown County POWTS permit.

- h. Brown County shore land permit.
- i. Wisconsin Public Service Commission Pipeline approval and permit.
- j. State of Wisconsin building approval and permit.
- k. Department of Agriculture Trade and Consumer Protection Scale permit.
- l. Wrightstown Building permit.

Applicant shall obtain and maintain all permits throughout the time the process is in operation. Applicant shall notify the Town of any violation of any of the permits or outstanding orders with regard thereto within 3 business days of receipt and shall diligently address any orders. Applicant shall annually provide the Town with proof that the continuing permits are in place.

- 4. Applicant shall provide a detailed site plan describing landscaping, lighting security measures, signage, pipeline routing and location of structures and substantial conformity with those already provided with the application. The town shall have the right to review and approve such site plans and may condition the approval upon reasonable conditions.

Public Health Safety and Welfare

- 1. The system shall be constructed with a passive containment system sufficient to catch and retain 110% of the largest single tank capacity.
 - a. Applicant shall comply with the spill prevention and emergency response plans approved by the State of Wisconsin.
 - b. Alarms shall be installed to monitor the digester 24 hours a day and an individual with authority to supervise emergency response shall be at premise or on-call 24 hours a day.
 - c. Applicant shall compose and submit to the Town for its review and approval of protocol addressing the steps to be taken to address any spill at the digester through the pipeline and connection point.
- 2. Natural Gas Extraction System.
 - a. The Natural Gas Extraction System shall be limited to gas extracted from the manure in the digesters and no other source.
 - b. Gas pressures at the site shall be monitored on a 24-hour basis and an internal flare system shall be used to lower any gas pressure and minimize the chance of odor escaping from the gas process.
 - c. Gas pipelines will be monitored 24 hours a day and will have tracers to facilitate prompt response to any breach or leak from the system.
 - d. The connection point shall likewise be monitored and shall be kept and maintained as required by the WPSC permit.

- e. Applicant shall compose and submit to the Town for its review and approval of protocol addressing the steps to be taken to address any leak or other breach of the gas extraction system from the extraction point at the digester through the pipeline and connection point. Such protocol shall, at a minimum, include the number for 24-hour contact for reporting any leak or breach and the assets available to respond to such situation.
3. Water Quality and Volume.
- a. Any effluent discharged into the East River Watershed shall be monitored as to quality and quantity.
 - b. All such monitoring, whether required by Wisconsin DNR or not, shall be independently tested and the results thereof shall be forwarded to the Town on a monthly basis for review. The Town may, at its option, require redundant testing of the effluent.
 - c. The Applicant shall produce a protocol addressing contingencies if water discharge exceeds the WPDES limits and shall present it to the Town for its review and approval.
4. Manure Delivery/Return Pipelines.
- a. All pipelines shall be located within county utility easement right of way. Prior to any construction, Applicant shall provide the Town with documentation showing the right to use such right of way and any necessary approvals.
 - b. The manure pipelines shall be monitored and shall have tracers located on them to assist in discovering any spill location.
 - e. Applicant shall compose and submit to the Town for its review and approval of protocol addressing the steps to be taken to address any leak or other breach of the Manure delivery/return pipelines from the digester to its destination. Such protocol shall, at a minimum, include the number for 24-hour contact for reporting any leak or breach and the assets available to respond to such situation.
 - f. Any brown water produced at the site to be returned to a contributor shall be transported in the same manner it was received at the site to minimize truck traffic.
 - g. The Town shall permit the use of those portions of the Mill Road utility easement for the gas and manure pipelines under the terms of this agreement.
5. Applicant shall be responsible for the cost of any spill, leak or breach in the gas extraction system and pipeline including the connection station, any spill or overflow of manure at the site, any leak or breach of the manure pipeline or any

other like spill or contamination cause by and attributable to the operation at the site and shall take prompt action to remediate any such circumstance.

Security

1. There shall be fencing surrounding the operation.
2. There shall be securely locked gates and the site shall be posted No Trespassing.
3. There shall be one entrance for ingress and egress to the site.
4. The site shall be monitored by camera surveillance.
5. The entrance and all roadways on the site shall be paved.

Traffic and Routing

1. Applicant shall prepare a plan and submit such plan to the Town for review and approval which shall show the routing for manure traffic on Town roads. The plan shall designate all contributors to the operation and indicate the routes and number of daily trips. The plan shall not be amended without the prior review and approval of the Town which approval will not be unreasonably withheld.
 - a. The town's consultant shall assess the condition of the Town roads to be used under this agreement and shall furnish a copy to the parties
 - b. The Applicant shall enter into a road maintenance agreement with the Town which shall require Applicant to pay for repairs to any Town roads used in the agreement
2. Truck traffic shall be limited to 55 roundtrips per day.
3. All truckers delivering and removing materials from the site shall be on contract directly with the applicant or with one of applicant's contractor in a manner source to allow applicant to direct and control the truck operators.
4. Applicant shall require all of its' truckers to refrain from engine braking while hauling manure and while empty or transporting other materials back to the original site.
5. Any truck carrying dried fiber from the site will be covered
6. The Applicant shall provide to the Town for its review and approval a protocol for addressing spill clean-up and other complaints regarding the truck traffic
7. Applicant shall be responsible for the cost of any spill of waste or fiber from during transport to or from the Site or when transporting fiber to locations outside the Town.

Access/General Complaints

1. Town officials, including the fire department, zoning administrator and building inspector shall be permitted to enter the premise for inspection purposes with 24-hour notice. The inspectors shall be accompanied by employees of the Applicant during any inspection
2. Applicant shall acquire all equipment, provide all requested training and otherwise comply with all conditions expressed in the attached fire department condition demands at Applicant's sole cost.
3. The system shall operate at 75 decibels measured at the operations site line except in emergency situations where repairs or other exigency may require machinery that is louder. Any such emergency or exigency shall be promptly reported to the Town.
4. The applicant shall draft and submit to the Town for its review and approval a protocol for addressing any noise or odor complaints concerning the operation of the facility. The plan shall include a 24- hour contact for such plan and a procedure under which the Town can properly review the situation and expedite a solution.

Community Relations

1. Applicant and owner shall participate in semi-annual public meetings to discuss the operations of the CUP, its impact on the community, and its record of compliance with the CUP.
2. The conditional use permit shall be of a five (5) year duration and shall be subject to review 5 years from the anniversary date of first operation.

High Capacity Well

1. Applicant intends to drill a high capacity well on site prior to drilling and placing the site. Applicant shall have engineered a cone of influence study to determine draw effect on adjacent property owners, including the Town.
2. The Town may withhold issuance with a conditional use permit until it is satisfied and no remediation is necessary.
3. Applicant shall be responsible for the actual cost of any remediation if necessary.

Use of Site/Continued Operation and Insurances

1. Owner and Applicant shall provide the Town with proof of the applicant's permission to use the property in the manner described in the CUP application.

2. Applicant and owner shall provide the Town with a guarantee or other security sufficient in type and amount that assures that resources will exist to pay for the property and sanitary closure of the site, and remediation of the site if digester operations discontinue.
3. Applicant shall provide and maintain a pollution insurance policy for and in the amount of \$3,000,000 to pay the cost and environmental remediation, bodily injury and property damage, and cleanup costs in the event of any accident at the digester or pollution created by applicant or third party on behalf of the applicant at the site or any of the pipelines referenced in the application. The Town of Wrightstown shall be named as an additional insured in any such policy.
4. The CUP shall not be transferable except upon approval by the Town.

Administrative Costs and PILOT

1. To the extent that the operation, real property and assets thereon are exempted from real or personal property taxes, the applicant shall pay the Town a payment in lieu of taxes (PILOT) equal to the amount of the Town's share of taxes on real estate and improvements if they were not exempt from taxation. (estimated at \$177,000 for 2019)
2. In addition to any PILOT, the applicant shall pay any and all administrative costs suffered by the Town in processing this conditional use application, including actual attorneys' fees expended, actual costs of publication, and any other costs actually incurred by the Town in processing this CUP.
3. In addition to any PILOT, applicant shall pay \$24,000 per year toward costs incurred by the Town in administering the CUP, including, specifically, costs of engineering, review and advice.



GREENLEAF VOLUNTEER FIRE DEPARTMENT, INC.

1657 Day Street P. O. Box 57 Greenleaf, WI 54126-0057

Emergencies Dial: 911

Administrative: 920-864-2200 Fax Line: 920-864-2622

Email: greenleaffire@new.rr.com

EXHIBIT

tabbies

7

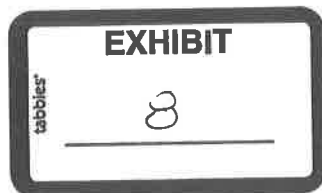
1. BC Organics agrees to:
 - a. Fire inspections per local ordinance and Wisconsin Statute §101.14(2)(c)(1); and,
 - b. Comply with any orders to correct conditions liable to cause a fire.
2. BC Organics agrees to:
 - a. Purchase and install a KnoxBox per Fire Department guidelines; and,
 - b. Provide current keys/cards and or codes to all restricted areas.
3. BC Organics agrees to:
 - a. Provide the Fire Department with numerous contact names including phone numbers; and,
 - b. Update that list on a yearly basis or as needed.
4. BC Organics agrees to provide a current emergency response manual to the Fire Department and have one available on site that would cover all conceivable responses including a list of sub-contractors that would be called in to assist.
5. Per applicable law, BC Organics agrees to:
 - a. Properly store and label all hazardous materials; and,
 - b. Provide Safety Data Sheets to the Fire Department in addition to having them on site.
6. BC Organics agrees to install and maintain a large sign on the front gate with:
 - a. What number to call in the event of an emergency (e.g., EMERGENCY - CALL 911);
 - b. Name of the facility;
 - c. The physical address; and,
 - d. A 24-hour per day emergency contact number.
7. BC Organics agrees to purchase, install and maintain any sign(s) requested by the Fire Department and/or EMS for the safety health and wellbeing of personnel during emergency operations (e.g., "Do not close this valve", "Do not enter", "Do not turn fan off", "Respiratory protection required", "Machinery starts automatically").
8. BC Organics agrees to purchase and maintain a windsock at the facility.
9. BC Organics agrees to:
 - a. Install and maintain a pipe and valve from their 50,000-gallon clear/clean water reservoir to a point just outside of the building for onsite fire protection;
 - b. Work with the Fire Department on the necessary configurations (e.g., pipe/valve size, reservoir venting) to maintain a water flow of 1,500 GPM until such time that the reservoir is empty;
 - c. Provide a large "No Parking – Fire Department Connection" sign at the draft connection; and,
 - d. Keep the connection area fully accessible year-round.
10. BC Organics agrees to:
 - a. Purchase all necessary safety/rescue and related equipment for the facility per Exhibit A;
 - b. Replace it as needed, required or at the end of its service life;
 - c. Keep this equipment on sight, in a locked and properly maintained trailer;
 - d. Park the trailer in an area that remains fully accessible year-round;
 - e. Not use such equipment except for training or emergency purposes;
 - f. Properly store and maintain such equipment per manufacturer and recognized standards;
 - g. Test and certify such equipment as required and provide a copy of those tests/certifications to the Fire Department upon completion;
 - h. Repair/retest or replace any safety/rescue equipment that fails testing/certification as soon as possible;
 - i. Check and inventory such equipment monthly and provide a copy of this report to the Fire Department on a yearly basis;
 - j. Allow the Fire Department to come upon the property to inspect and/or train on such equipment; and,
 - k. Purchase any other safety/rescue equipment now or in the future that may be needed (does not include fire apparatus).
11. BC Organics agrees to provide and/or pay for a qualified instructor to fully train and provide recertification courses to the Fire Department and/or EMS on confine space entry and any other training that would be necessary at the facility in the event of an emergency.
12. BC Organics agrees that upon reasonable notification from the Fire Department and/or EMS, they will provide an employee that is familiar with the facility's operations for training, walkthroughs and/or pre-planning purposes.
13. BC Organics agrees to meet with the Fire Department and/or EMS when asked and to act in good faith on matters not covered by this permit.

Exhibit A

CONFINED SPACE RESCUE EQUIPMENT LIST

PRODUCT NAME / DESCRIPTION	QUANTITY
Rescuer Equipment	
RescueTECH VANGUARD II Med/Lg	6
PRO Leather Rescue Glove	6
Vertex II Vent Helmet Red	6
Helmet Light Dual LED	6
Ear Plugs	10
Equipment Bag	2
Radio Chest Harness (using intercom system instead)	0
Main Line Bag	
1/2 inch Rescue Rope 300' Red	1
Anchor Sling 8', 1300lb working load	1
Webbing 20' Red	1
Standard "D" Steel Carabiner 50kn	7
Rigging Plate	1
Rescue Bar Rack W/hyperbar	1
Prussik Minding Pulley	2
8mm Prussik Matched Set	2
Rope Bag Large Red	1
MPD	1
Anchor Plate	1
Belay Bag	
1/2 inch Rescue Rope 200' Blue	1
Anchor Sling 8', 1300lb working load	1
Webbing 20' Red	1
Standard "D" Steel Carabiner 50kn	6
Prussik Minding Pulley	2
8mm Prussik Matched Set	2
Rope Bag Large Blue	1

Rigging Plate	1
Softgoods	
8mm Prussik Matched Set	1
Webbing 1 inch 12' Yellow	10
Webbing 1 inch 20' Red	10
Webbing 1 inch 30' Blue	2
Webbing 1 inch 50'	1
Equipmet Bag	1
Rescue Equipment	
Sked Litter	1
Stokes Bridal	1
Pick Off Strap	1
Back Board	1
Back Board Straps	1
CMC Aztek	1
SKED EVAC Tripod	1
Con-Space Comm. System for 5	1
Ram Fan 12" w25' hose 120vac	1
LSP Halfback	1
LSP Lift Bridle	1
Light Sticks	10
90' Winch and bracket	1



DRAFT

Draft 1-7-19

Road Maintenance and Repair Agreement - Town of Holland and BC Organics LLC

This Road Maintenance Repair Agreement (the "Agreement") is entered into as of _____, 2019, between the Town of Wrightstown, a Wisconsin Town organized and existing under Chapter 60 of the Wisconsin Statutes (the "Town"), with its offices located at _____ AND BC Organics, LLC, a Wisconsin limited liability company ("BCO"). The Town and BCO may be referred to as "Party" or "Parties" as the context may require.

The Parties represent as follows:

- A. BCO intends to construct a manure digester on an approximately 25 acre site located on Parcel W-382 in the Town (the "Digester") and operate it to generate renewable natural gas, process manure and substrate materials. BCO will retain a construction contractor to construct the digester.
- B. On completion of construction of the Digester, BCO and its customers, contractors, subcontractors, and suppliers (collectively "Customers") will need to use roads, bridges, and culverts that are maintained by the Town or over which the Town has jurisdiction and authority, which roads specifically include those identified in the Digester Routing Plan (as defined below, Exhibit A) as well as any other roads which the Town directs BCO to utilize as an alternative to those specified in the Digester Routing Plan for reason of detour or otherwise (the "Roads").
- C. The Town, in accordance with the Town Code, has adopted Ch. 348, Wis. Stats., and has the authority to regulate the use of Town roads, and authority under sec. 86.07, Wis. Stats., to recover damages for the cost of repairs to Roads which result from operations of an identified party.
- D. BCO will be using the Roads of the Town by certain vehicles operated by BCO or on its behalf, and the Town is willing to authorize the use. In order to create an ongoing process for recovery of damages caused by BCO's use of the Roads, this Agreement establishes terms and conditions for use of the Roads by BCO and/or its Customers.
- E. The Parties have determined that it is in the mutual interest to set forth the terms and conditions relating to the issuance of the required permits for the use of the Roads of the Town.

DRAFT

Therefore, the Parties agree as follows:

1. Effective Date; Assessment. This Agreement shall become effective upon its execution by both of the Parties (the "Effective Date").
2. Routing Plan and Road Use. The parties have agreed to a plan for routing of Digester construction, delivery and other traffic using certain of the Roads (the "Digester Traffic Routing Plan"), which Roads are depicted on the Digester Routing Traffic Plan and consist primarily of certain portions of (ROAD NAMES). A copy of the Digester Traffic Routing Plan is attached hereto as Exhibit A. During the term of this Agreement, and subject only to the terms and conditions set forth herein, BCO and its Customers shall enjoy and have the right to use the Roads without restrictions, other than those contained in Wisconsin Statutes, BCO understands and acknowledges that this Agreement applies solely to the Roads of the Town, and does not purport to address any impacts or conditions of use of the roads of other municipalities or towns.
3. The Town's Engineers or designee (*name*), will perform an initial assessment (Initial Assessment) of the condition of the Roads to determine the Roads' respective condition and repair at commencement of this Agreement. BCO may perform its own assessment. The engineer (*name*) and BCO will exchange all records generated in their preconstruction assessment of the Roads. The reasonable expenses related to activities by *name* incurred as a result of the Initial Assessment are to be paid by BCO, up to a maximum cost of \$10,000.00
4. Operation phase. (a) BCO and its Customers shall have the right to use the Roads on the terms and conditions herein during the operational phase of the Digester. By written notice to BCO, the Town may limit or impose conditions on the use of the Roads by BCO for seasonal reasons, or if weather or other conditions require the same; provided, however, that such conditions apply generally to similarly situated commercial enterprises and that the Town furnish as much advance notice to BCO of such conditions as is reasonably practicable under the circumstances.
 - (b) Except during the Spring Thaw Season identified in subparagraph (c) below, BCO shall have a general permit which authorizes BCO or its Contractors to operate vehicles with a gross weight of 80,000 pounds or less on the Roads.
 - (c) Spring Thaw Season. If Town of Wrightstown posts its roads for lower weight limits during the spring of the year. The Notice shall be in the form attached to this Agreement as Exhibit C. During that season, BCO and its Customers shall comply with the reduced seasonal weight limits on the Roads and use such roads as are designated as appropriate seasonal routes; provided that BCO has received reasonable advance notice of any such seasonal weight limits, and provided further that such seasonal weight limits generally apply to all similarly situated commercial businesses utilizing the Roads.
 - (d) Overweight Vehicle Permits. BCO and its Customers shall apply for special trip permits before operating any vehicle on the Roads with a gross weight in

DRAFT

excess of 80,000 pounds. BCO shall comply with the conditions and pay fees associated with such special trip permits.

5. Term. The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twenty (20) years thereafter. This Agreement will be automatically renewed for additional periods of five (5) years, unless either Party furnishes written notice to the other Party of its desire not to renew this Agreement at least ninety (90) days prior to the expiration hereof. This Agreement was negotiated in contemplation of the Digester having sixteen (16) digester units for manure and substrate. It was also negotiated in contemplation of dairy farms being serviced by the Digester. In the event that BCO determines that it will add additional farms which will generate additional truck traffic are contracted or begin using the Digester, then this Agreement may be reopened by the Town for negotiation if additional road maintenance compensation to the Town. Conversely, should one or more of the farms which are contemplated to use the Digester cease to do so, then this Agreement may be reopened by BCO to negotiate reductions in road maintenance compensation to the Town.
6. Maintenance of Roads during Term of Use. (a) The parties acknowledge that under Wisconsin law, the Town has certain rights to assess the cost of repairs and damages to its Roads which are caused by the operation of the Digester. As a complete alternative to the processes set forth in section 86.07, Wis. Stats., or any other provision of law authorizing the Town to impose charges against property owners for road damages, the parties agree to the following provisions for road use and damage assessment with respect to the Roads. Nothing herein limits the Town's right to collect damages pursuant to sec. 86.07, Wis. Stats., that may be caused by or on behalf of BCO for any other town roads not covered by this Agreement.
 - (b) Following the Commercial Operation Date (as hereinafter defined) and until such date as BCO ceases operating the Digester (the "Operational Phase"), BCO shall, on or before the thirty-first (31st) of each January during the term of this Agreement, make an annual payment in the amount of \$50,000.00 to the Town. The Town shall maintain the revenues paid by BCO in a separate fund (the "Road Maintenance Fund") for the purposes set forth in this Agreement. Notwithstanding anything contained herein to the contrary, the aggregate amount of payments to be made by BCO into the Road Maintenance Fund shall in no event exceed an amount equal to \$50,000.00 times the number of years the Agreement shall remain in force. As used herein, the term "Commercial Operation Date" shall mean the date upon which the Digester is ready for commercial operation following completion of construction, as evidenced by the issuance of a certificate of occupancy.
 - (c) In the event that there are damages during the operational phase, the Town shall give written notice of the damage to BCO. BCO shall have ten (10) business days within which to respond to the notice and indicate whether or not it disputes responsibility for the damages.
 - (d) If BCO accepts responsibility for the damages, or is determined to be

DRAFT

responsible for the damages under paragraph E, the Town shall complete the repair, containment or prevention of measures of any damage done to the Roads.

(e) The Town shall draw upon the fund created by this paragraph to recover the cost of repairs for the Roads. In the event that it shall appear that the fund balance shall be insufficient to compensate the Town for the necessary repairs, the Town shall give written notice to BCO of the deficiency, and BCO shall be obligated to prepay the amount of annual fees required under Paragraph 7(b) hereof to cover the amount of any such deficiency; provided however, that BCO shall be obligated to prepay no more than ten (10) annual payments hereunder; and provided further, that the total liability of BCO under this Agreement for repairs and maintenance of the Roads during the operational phase of the Digester may not exceed the aggregate limit set forth under Paragraph 7(b) of this Agreement.

(f) If BCO disputes its responsibility for damages identified by the Town, the parties shall meet and discuss the matter within ten (10) business days. If they are unable to come to an agreement, they shall resolve the dispute by informal arbitration. The Town and BCO shall designate one arbitrator, and the two arbitrators shall designate a person with knowledge of road maintenance but who has no economic interest in the outcome of the proceeding. The amount in controversy exceeds \$25,000, either party may elect to use arbitration under the rules of the American Arbitration Association. In the event that the Parties cannot agree upon an Arbitrator, either Party may apply to a court of competent jurisdiction to appoint an Arbitrator in accordance with sec. 788.04, Wis. Stats. Either party has the right to request a hearing or request that the Arbitrator make a determination without a hearing. Any such hearing requested shall be held at the Town Hall at a mutually agreeable time following receipt of the information provided in accordance with this Paragraph 8, however, no later than sixty (60) days from the date of the request. The Arbitrator's determination(s) shall be considered an arbitration award under the provisions of Chapter 788, Wis. Stats., and shall be binding upon both Parties and shall be enforceable in accordance with sec. 788.09, Wis. Stats. Both parties shall bear their own arbitration costs and shall share the cost of the third-party arbitrator equally.

(g) At the conclusion of this Agreement, any funds remaining in the reimbursement account created under this Agreement shall lapse to the road funds of the Town, with the general direction that such funds be used to pay for reconstruction of the Roads. If the Roads, or part of them, have been annexed or abandoned, the Town may use the remaining funds for other road purposes.

(h) The Road Maintenance Fund will be the sole and exclusive source for the Town to recover from BCO for damages to the Roads caused by BCO during the Operational Phase and/or for BCO's share or assessment of the costs to upgrade, maintain, repair and/or replace the Roads as the result of use during the Operational Phase, and the Town may not impose any liability otherwise upon BCO, through special assessment or otherwise, with respect to any such costs.

DRAFT

Notwithstanding the foregoing, nothing herein will relieve BCO of the responsibility to pay real property, personal property or other similar taxes generally due and otherwise applicable to the Digester site and/or the Digester assets.

(i) BCO agrees that, if at any time after the date of this Agreement the Digester and/or its assets become exempt from real or personal property taxes as a result of a change in State laws, rules, or regulations applicable to the Digester, it will pay to the Town during the remaining term of this Agreement an amount that represents the portion of such taxes that the Town would have otherwise received (at the then current rates) had the Digester not qualified for an exemption from such taxes (i.e. the local portion of such taxes). The payment of any such amounts will be in addition to BCO's obligation to make annual payments to the Road Maintenance Fund and will not be subject to the limitation set forth in Paragraph 7(b) of this Agreement.

7. Decommissioning. In the event that the Digester shall cease operation, damage to the Roads caused by any activity related to its decommissioning shall be collected using the procedure which applies to construction activities under paragraph 3 above. In the event that BCO disputes the cause of such damages and/or the cost or nature of the repairs, such disputes will be resolved using the dispute resolution provisions set forth in Paragraph 7(f) of this Agreement.
8. Hold Harmless. (a) In accordance with sec. 348.25, Wis. Stats., BCO warrants its work or the work of any other person or entity providing services to BCO shall cause no material damage to any other property of the Town (not including the Roads, damage to which is covered by the other provisions of this Agreement). BCO shall indemnify, protect, defend, and hold harmless the Town from and against any material damages to property of the Town or others (not including the Roads) which may arise out of or be caused by any act of BCO, its Customers or any other person or entity providing services to BCO which may arise out of or be caused by the maintenance, presence, use, or removal of any equipment owned or provided by BCO. Each of the Parties shall indemnify, protect, defend, and hold harmless the other Party from and against any and all losses, claims, lawsuits, judgements, and demands whatsoever, including the cost of investigation and reasonable attorneys' fees, which may arise out of or be caused by any negligence of the indemnifying Party or its agents or any other person or entity providing services to the indemnifying Party.

(b) BCO's obligations for Road damage are limited to the amount of funding the fees, charged under this Agreement.

(c) This Agreement does not apply to claims asserted against the Town or its officers or employees for personal injury or claims other than damages to the Roads.

9. Insurance and Guarantees. BCO represents that, upon acquisition or lease of the

DRAFT

Digester site and at all times thereafter during the term of this Agreement , it shall maintain Commercial General Liability Insurance including coverage for bodily injury, death and property damage with a limit of liability of not less than \$1,000,000 each occurrence and in the annual aggregate, containing such other terms and conditions as are commercially reasonable for the industry, and will name the Town as an additional insured on such liability policies in connection with the Digester. BCO acknowledges that pursuant to the conditional use permit that will be issued in conjunction with the Digester, BCO shall provide additional guarantees or security, which shall secure its performance of this Agreement.

10. Relationship to Conditional Use Permit. To the extent applicable to the use of the Roads by BCO, Conditional Use Permit (NUMBER OF CUP) issued by the Town to BCO relative to the construction and operation of the Digester (the "CUP") is incorporated by reference into this Agreement. Compliance with this Agreement shall constitute compliance with road maintenance related conditions of the CUP.
11. General Provisions.
 - A. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral understandings or agreements. Failure of BCO or the Town to insist on performance of any of the terms and conditions of this Agreement, or to exercise any right or privilege contained in this Agreement, shall not be considered as waiving such terms, conditions, rights or privileges. No waiver shall be effective unless reduced to writing and executed by both Parties. This Agreement and its Exhibits may be modified only in a writing signed by the Parties hereto.
 - B. Third-Party Beneficiaries. This Agreement is intended to be solely for the benefit of BCO, and the Town and their successors and permitted assigns. This Agreement is not intended to and shall not confer any rights or benefits on any other third party not a signatory to this Agreement.
 - C. Severability. In the event that any provision of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void portion of such provision materially alters the rights or obligations of either Party under this Agreement. Even if there is a material alteration in the remainder of the Agreement, the Agreement shall continue in full force and effect as if such provision was not contained in the Agreement, but the Parties shall negotiate in good faith a new provision that will, to the extent practicable, restore the benefit of the bargain contained in such provision.
 - D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. The parties agree that this Agreement does not impose an impact fee and that the charges

DRAFT

hereunder are not governed by the impact fee provisions of Wisconsin Law.

- E. Remedies. Except as otherwise expressly set forth in this Agreement, the rights and remedies provided in this Agreement shall be in addition to all other rights and remedies available in law or equity.
- F. Headings. The headings set forth in this Agreement are inserted for convenience and shall have no effect on the interpretation or construction of this Agreement.
- G. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall have the same force and effect as the original instrument.
- H. Authority. The parties hereby warrant and represent that they are acting with full authority of the principals they may represent and/or upon all proper approvals from the entities on behalf of whom they are signing for.
- I. Assignment. BCO shall not be prohibited from transferring, selling, or gifting all or any part of the Digester to another party; provided however, the party to whom the Digester (or any part thereof) is being transferred assumes the BCO's responsibilities under the terms of this Agreement. BCO shall not be required to obtain approval of the Town for any such transaction, but shall provide the Town notice of transfer of ownership. BCO shall not be prohibited from transferring its rights hereunder to any other owner as they may choose, providing the party to whom the rights are being transferred assumes the BCO's responsibilities under this Agreement.
- J. Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party upon actual delivery to such party or upon the second day from mailing the notice via the US Mail to the party at the address designated below for such party (or such other address as a party may specify in writing to the other party from time to time):

If to BCO:

BC Organics LLC
W175 N11117 Stonewood Dr.
Suite 209
Germantown, WI 53022

If to the Town:

DRAFT

(INSERT ADDRESS OF TOWN)

With Copy to:

(INSERT ADDRESS)

[Signature page to follow.]

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BC Organics LLC

By: _____

Name: _____

Title: _____

Town of Wrightstown, Brown County

By: _____

(NAME & TITLE)

ATTEST:

(NAME & TITLE)

Note: BCO or its designee will contact the Town chair prior to the initial use of any aforementioned roads. Potential liability begins on the date of initial use. Town use Permits are required for any vehicle in excess of 80,000 pounds.

DRAFT

Exhibit A Digester Routing Plan

DRAFT

Exhibit B

Required Road Improvement (to be determined)

DRAFT

Exhibit C

Spring Thaw Weight Limits Notice Form