

**General Permit Number WMGR109  
BIOFUEL AND BIODIESEL  
PUBLIC COMMENT & RESPONSE DOCUMENT  
March 2006**

On October 1, 2005, the Department of Environmental Protection (DEP) began a sixty-day public comment period on a Department-initiated residual waste general permit. The general permit is for processing of used restaurant oil, yellow grease, grease-trap waste, oils and animal fat from food processing or rendering plants, waste from ethanol production, soybean soap stock, float grease (from wastewater treatment plants), and off-specification vegetable oils to produce biofuel and biodiesel for beneficial use as fuel. Relevant comments derived from written comments received during the public comment period have been summarized below. Comments may be representative of single or multiple commentators. Department responses are provided for each comment or grouping of comments.

#### List of Commentators

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## COMMENTS AND RESPONSES

### Facility Size

1. Comment: This permit will basically stop me from being a “home brewer.” Residents should be allowed to produce 1000 gallons or less for their own use and the restrictions on distance for production/storage facilities should be eased. (1,3,4,7,9,10,11,12,13,14,17)
2. Comment: I would strongly recommend an exemption from the requirements in the draft permit for businesses producing limited quantities of biofuel (<2500 gallons per year) for their company use, provided said businesses comply with any and all road use tax requirements. (4,9,11)
3. Comment: My understanding is that the DEP does not intend to bother with small-scale producers. I am asking an exemption be added to the permit language for those who make fuel for their own use or by members of a co-op, for those who make fuel but do not sell it commercially, for those who make less than 5000 gallons annually and for those who make fuel in batches less than 200 gallons. (8)
4. Comment: The general permit should be waived for processors producing up to 5000 gallons for agricultural operations. An average farm will use over 1000 gallons of diesel fuel per year for crop production. (10)

### Response to Comments

- 1 – 4: The Department is only requiring commercial processors in the business of selling the product biofuels to register under this general permit. The Department has included a provision that noncommercial processors may be required to register under this general permit if the Department determines their activities are causing harm, creating a nuisance or threatening human health, safety, or the environment.
5. Comment: The National Biodiesel Board refers to small producers as anyone producing up to 250,000 gallons per year. I believe that it would be prudent to exempt small producers from your department’s oversight. (12)

Response: The amount of waste to generate 250,000 gallons of fuel is significant. The Department believes it is reasonable to have commercial facilities processing such quantities of waste operate under a valid DEP permit.

6. Comment: Those who produce less than 500,000 gallons per year or less than 250 gallons per batch should be exempt from permitting. (13,14)

Response: The amount of waste to generate 500,000 gallons per year or 250 gallons per batch of fuel is significant. The Department believes it is reasonable to have commercial facilities processing such quantities of waste operate under a valid DEP permit.

### Feedstocks

7. Comment: The list of eligible feedstocks should be broadened to include float grease and fatty acid distillates from oil seed processing. (6)

Response: The Department has added float grease (from wastewater treatment plants) to the list of waste feedstocks covered under the general permit. Fatty acid distillates from oil seed processing, such as soy oil, are considered a product and are not regulated as wastes.

8. Comment: The general permit seems to only target the production of biodiesel from used restaurant oil. (11)

Response: The Department has added additional wastes to the general permit that were identified by the regulated community during the comment period as potential waste feedstocks for producing biodiesel.

9. Comment: It appears that if biodiesel was made from raw vegetable oil, it would not fall under this general permit. (11)

Response: The general permit is designed to cover processing of waste to produce biodiesel and other biofuels. As long as the raw vegetable oil was not classified as a waste for some reason, such as a batch that is off-specification, coverage under this general permit is not required.

10. Comment: The Department should promulgate an industry-wide coproduct determination for new and used vegetable and animal biofuel feedstocks. (15)

- Response: Because many of the waste feedstocks are regulated under the Municipal Waste Regulations, the coproduct determination option is not possible.
11. Comment: Reclassify covered materials as co-products rather than waste when sold for use in biodiesel production. Classifying them as waste when sold for use in biodiesel production places a significant burden on the potential purchaser that has the practical effect of diminishing the attractiveness of these products for use in a beneficial manner. It potentially negatively impacts the market value the seller can demand for the product and thus potentially results in more of these products ending up in landfills, wastewater treatment facilities, or used for other non-beneficial purposes. By classifying these fats and oils as a “co-product” when sold for use as a feedstock in biodiesel production, it makes them significantly more attractive, resulting in more being converted to a beneficial use, which helps enhance public health and supports expansion of the state’s emerging biodiesel industry. (18)
- Response: Because many of the waste feedstocks are regulated under the Municipal Waste Regulations, the coproduct determination option is not available. The public is becoming more accustomed to recycling and beneficial use of wastes, such as waste oil (petroleum) and we expect the competition for feedstocks, and demand for the resultant biofuel, to increase.
12. Comment: A preferred approach would be to provide a condition in the general permit that the approved feedstocks having at least 12,000 BTU per pound and meeting any specification for a combustion device at the point of delivery to a production facility using a closed-loop processing system is no longer a waste. (15)
- Response: The Department is unable to use this suggested approach. The Department can determine a material is no longer a waste under 25 Pa. Code § 287.7(b)(1) “subsequent to the processing activity,” not prior to the processing activity.
13. Comment: It seems to us that, as the biofuel market becomes more mature, businesses are intentionally producing raw materials for use in making biofuel, and the distinctions used by the Department to characterize the raw material as residual waste become more and more blurred. (15,16)

Response: The Department believes oil feedstock from traditional sources, such as soy oil, will continue to dominate the non-waste feedstocks for this industry. However, we acknowledge the possibility that intentionally produced oil feedstocks from more sources could become more widespread if the economics become favorable. The Department will continue to use the definition of ‘waste’ in 25 Pa. Code § 287.1 to determine whether these materials are waste.

14. Comment: In the past, yellow grease was discarded. Now, however, more frequently it is sold for use as a raw material. It has value and established markets and presents no harm to people or the environment. Therefore, at a minimum, yellow grease, as sold in compliance with the specifications of established market contracts (futures and spot contracts) should not be deemed a residual waste by the Department in the first place, and, therefore, should be outside the purview of the residual waste rules. (15,16)

Response: Yellow grease has been sold as a commodity for use as an ingredient in the manufacture of animal feed. Therefore, yellow grease falls out of the definition of waste for this use under the definition of waste in 25 Pa. Code § 287.1, since it is used as an ingredient in a manufacturing process. Yellow grease used to produce biofuel is being processed to convert it into the biofuel, rather than used as a mere ingredient, and is therefore still considered waste under the definition.

### Processing Technologies

15. Comment: There are other technologies than base-catalyzed transesterification that can be used to prepare biodiesel. Condition 1 should be changed to include “base-catalyzed transesterification and other types of biodiesel manufacturing processes.” (2,11)

Response: The Department agrees that there are other types of transesterification that could be used to produce biodiesel and has dropped “base-catalyzed” from the requirement.

16. Comment: Manufacturing processes are often considered proprietary. Language should be added to Condition 10 to the effect that proprietary methods/processes be kept confidential by DEP authorized employees and agents. (2)

Response: The Department has the responsibility to hold such information confidential under 25 Pa. Code § 287.5 and does not need language added to the general permit. Language in the general permit applies to the permittee, not the Department.



17. Comment: The processing should be broadened to include esterification (generally, but not necessarily acid catalyzed) and polishing using absorbents. Deodorization should not be limited to steam stripping. (6)

Response: The Department agrees and has modified the general permit accordingly.

18. Comment: For some high free fatty acid feedstock oils, it may be necessary to add a preliminary step of acid esterification. Please clarify that this esterification is included within the authorized processing. (15,18)

Response: The Department agrees and has modified the general permit accordingly.

### Bonding

19. Comment: I disagree that bonding is necessary for glycerin and soap, the byproducts of biodiesel. The maximum amount of 500 gallons of this material to be stored before a bond is required is very small. A more appropriate number might be 15,000 gallons. (2)

Response: The Department is not requiring bonds for biodiesel facilities and has dropped the requirement from this general permit.

20. Comment: Special conditions 14, item p, and 15, item g, require that companies have “bonding and insurance in an amount acceptable to the Department.” Perhaps a clause could be added that either explicitly defines the acceptable amounts or says something to the effect of “this amount will be in line with the industry standard for such projects.” (6)

21. Comment: I request that a sliding scale for fees and bonds, based on annual production capacity and/or batch size capacity be added to the permit language. (8)

22. Comment: I find the bonding requirement most troublesome of all. This could easily make the recycling of waste vegetable oil into biodiesel cost prohibitive. (11)

Response to  
Comments

19 – 22: The Department is not requiring bonds for biodiesel facilities and has dropped the requirement from this general permit.

23. Comment: The bonding and insurance requirements should cover the reasonable replacement of local damaged infrastructure resulting from any actions of the facility. (5)
- Response: The Department is not requiring bonds for biodiesel facilities and has dropped the requirement from this general permit. In any case, bonding to cover replacement of local damaged infrastructure resulting from any actions of the facility is not covered by the Solid Waste Management Act.
24. Comment: Under the applicable law, the Department may waive bonding requirements in general permits for this type of operation. Clearly, for this type of operation, where the management of the material is not potentially harmful, nor is large quantities likely to be stored, there is no need for those provisions. (15)
- Response: The Department agrees with the commentator and has dropped the bonding requirement from this general permit.

#### Storage

25. Comment: The 90-day storage limit in Condition 17 is probably unnecessarily short, but may be manageable. A longer storage period would not produce any additional safety concerns. (2)
- Response: This limit has been dropped from this general permit.
26. Comment: The permittee should demonstrate compliance with aboveground storage tank and underground storage tank storage tank regulations for tanks and piping used by the facility. (5)
- Response: All underground storage tanks and aboveground product (non-waste) storage tanks are subject to the requirements of the storage tank regulations under 25 Pa. Code, Chapter 245. Any aboveground storage tanks used for waste are subject to the requirements in 25 Pa. Code, Chapter 299.

27. Comment: Special Condition 26 will effectively stop the development of biodiesel production in the State of Pennsylvania from feedstocks covered by this permit. Unless a biodiesel plant includes glycerin refining equipment into its production operation, it will not be able to store more than 500 gallons of crude glycerin. These storage limitations do not allow these plants to safely accumulate enough glycerin to effectively market this product to companies who will further refine it into higher grades of glycerin. (18)

Response: Condition 26 of the draft general permit has been removed from the general permit.

### Siting Criteria

28. Comment: The setback distances in the permit either eliminate most of the sites I have looked at or subject them to getting the neighbor's approval. All of the distance requirements appear to be unnecessarily long. I suggest setbacks of 50 yards from schools and playgrounds and 50 feet from an occupied dwelling. The 50 feet from a property line appears to be reasonable, with the added exceptions already stipulated. (2)

29. Comment: The setbacks included in the draft permit would prohibit most current operators from continuing at their present locations. (8)

30. Comment: The local zoning requirements, which are relied upon for producers that do not use Department-characterized waste as feedstock, should suffice for either situation. (15)

### Response to Comments

28 – 30: The 300-yard setback from a school or playground is required under Act 101 of 1988. The Department believes these facilities should not be located in the 100-year floodplain unless they have an acceptable method for protecting the facility from a flood. The setbacks from an occupied dwelling and from a property line have been removed from the final general permit.

31. Comment: On the issue of interpretation of the exclusionary distances, we suggest that it should only be, at a minimum, the actual process manipulating residual waste feedstock that is subject to the exclusionary criteria. That is, other portions of the operations, such as off-loading raw materials that may include residual waste, loading, finished product storage, boilers, nonwaste raw material storage, equipment storage, lab space, and office space, should not be subject to the exclusionary distances. Please clarify that as long as the raw material residual waste storage and actual residual waste processing operations are beyond the established exclusionary distance, the condition will be satisfied. This clarification is particularly important for loading and unloading. Rail access is an important aspect of production facility operations and there are many rail spurs associated with existing properties that, due to age and urban setting, are within 300 feet of occupied dwellings. It would be cost prohibitive to relocate these spurs and, in any case, would not lessen the risk to proximate dwellings. Therefore, we ask that the Department clarify that loading and off-loading of railcars and trucks may take place within the exclusionary distance, as long as the residual waste storage and processing operations are beyond the established exclusionary distance. (15,16)

Response: The exclusionary criteria normally apply to the entire facility that, by definition, includes office space, access roads, etc. We do believe we can be flexible in regards to areas where no waste management activity takes place, however, loading and off-loading of railcars and trucks are areas where waste management activities occur and are subject to the exclusionary criteria. The siting criteria in the final general permit include a 300-yard setback from a school, park or playground and not located in the 100-year floodplain unless they have an acceptable method for protecting the facility from a flood.

### Specifications

32. Comment: Glycerin is not toxic. It is used in pharmaceuticals, feed additives, cosmetics, etc. In the biodiesel process, crude glycerin by-product has been marketed as environmentally-friendly spray for dust control on dirt roads and as well drilling lubricants. There is not a need to require purification of crude glycerin to ASTM D 1257 standards before it is considered not a waste. The real concern is if there is residual methanol left in the glycerin. Some plants find it not financially worth it to reclaim the methanol from the glycerin layer. Glycerin should only be considered a waste if the process does not remove methanol. (2)

33. Comment: Special Condition number 30 specifically requires the glycerin produced by the production process to meet ASTM D 1257 in order to be considered 'no longer a waste.' This is not commercially reasonable. None of the glycerin produced by biofuel production meets the 98.7% purity requirements of the ASTM standard. The glycerin produced by the biofuel industry will typically be on the order of 70 to 80% pure. In order for the produced glycerin to meet the ASTM standard, it requires further distillation in a purification plant. Nevertheless, the glycerin produced has a ready market, either as a production stock for the ASTM D 1257 grade glycerin or as a lesser quality glycerin used in a variety of products, as is. The fact is, there is an existing market for this non-ASTM spec glycerin product (primarily producers of soap and shampoos) and it is generally 'brokered' to the many outlets that exist. (15,18)

Response to  
Comments

32 – 33:

Use of the crude glycerin as an ingredient in a manufacturing process, such as in cosmetics, soaps, and animal feed, would fall out of Condition 18 pursuant to the definition of waste in 25 Pa. Code § 287.1. This has been clarified in the general permit. The Department chose the glycerin specification ASTM D 1257 for considering the glycerin to no longer be waste since that is the generally accepted specification. The Department has not been made aware of any other appropriate specifications. The Department does agree, however, that off-specification glycerin shipped to a manufacturer for conversion into glycerin that meets the specification should not be waste and has included that provision in the general permit.

34. Comment: Full testing to show that biodiesel satisfies the requirements of D6751-03 costs over \$1000 per test. It is impractical and prohibitively expensive to test every outgoing biodiesel shipment. Instead, reputable biodiesel equipment manufacturers verify the production process with sufficient ASTM testing until reasonable assurance is obtained that this process is in control and a level of confidence is reached that the product passes all ASTM specs. There are some critical tests within D6751-03, but not the entire set of ASTM specs. This is a very critical point in the finances of the biodiesel company, particularly for start-up companies working with smaller volumes. The wording in Condition 23 should be changed to: "...the results of testing to show the biodiesel process employed satisfies the requirements of ASTM D 6751-03...." (2,15,16)

- Response: This requirement has been removed from the general permit.
35. Comment: Special condition 29 requires biofuels to meet ASTM D 396-05. It is critical that biofuel that does not meet ASTM D 6751 be included under this permit; there is a growing interest in using this sub-spec ester in heating and industrial applications. We are concerned that since ASTM D 396 was developed as a standard for a petroleum product, there may be specifications in this standard that cannot be met by a bio-based product. Is there another standard that could be used in place of this one? (6)
- Response: Condition 17 of the final general permit specifies that biofuel is no longer a waste if it meets ASTM D 396, ASTM D 6751, the specification for biodiesel fuel commonly used in the country where it will be shipped for use as fuel or blend stock, or the specifications required by the combustion device in which it will be used.
36. Comment: Testing the finished product for compliance with ASTM standards will be cost prohibitive to most small batch operations. (8,13,14)
- Response: The general permit approves beneficial use of biofuel and does not require testing. We believe most commercial facilities will do some testing to ensure product integrity.
37. Comment: We agree that, in the U.S., the current diesel fuel grade biodiesel is defined by the ASTM D 6751 specification. However, the market for biodiesel is not just under the ASTM specification. That specification is particularly applicable for its use as motor vehicle fuel. The General Permit should provide a mechanism to recognize that biodiesel is a broader category of fuel than just the ASTM specification. The better definition for biodiesel would be #27 or, 'any feedstock processed in an established esterification and/or transesterification process and meeting any recognized national or international biodiesel standard.' Also, the definition should acknowledge that off-spec biodiesel is still covered as 'no longer a waste' as long as it is sold to be recycled, re-blended or actually used as a fuel. (15)

Response: The term “biodiesel” is defined in the US by the ASTM D 6751 specification or by other biodiesel specifications in other countries. The commentator’s suggested broader “biodiesel” definition goes beyond the term as commonly used by the industry. The broader term “biofuel” is used in the general permit to mean any fuel prepared by the processes in the general permit. The Department has declared the biofuel to no longer be a waste when it meets a recognized fuel specification, such as ASTM D 396, or the specification for biodiesel, or if it meets the specifications required by the combustion device in which it will be used.

38. Comment: While we fully anticipate that we will produce ASTM spec biodiesel, it is possible that, once in a while, a batch may not strictly meet the ASTM standard. If this occurs, we will either reprocess this product, use it as a fuel in our boiler, or sell it as an 'off-spec' product. Please confirm that this will be allowed under the proposed General Permit without the product being classified as residual waste. Also, please clarify that our temporary storage of that material is not storage of residual waste. (16)

Response: Under Condition 17 of the final general permit, biofuel is not considered waste if it meets the specifications required by the combustion device in which it will be used.

39. Comment: Biodiesel is sold as B100 from the plant to companies who will then market that product as B100 or blend it with diesel fuel. We feel it is an unreasonable requirement to require the biodiesel production company to dictate how the fuel will be used after it leaves the plant. According to the ASTM D 6751 definition, the biodiesel must be fit for use and merchantable. If it meets the requirements of ASTM D 6751 why does its eventual use matter? (18)

Response: This requirement has been removed from the general permit.

Other

40. Comment: In Condition 7, it is implied, but not specifically stated, that this permit does not prevent discharging a waste, wastewater, or runoff from the site to the land or waters of the Commonwealth. If the waste is non-toxic, doesn’t overburden the local waste treatment facility, and doesn’t violate any other regulation, why can’t the material be placed in the municipal waste stream (sewer) or composted? (2)

Response: The condition has been removed from the general permit.

41. Comment: In Condition 14g, m and n, what constitutes proof? What is the cost of the application fee? What will the income be used for in relation to permitting? (2)
- Response: Those conditions have been removed or modified in response to public comments. The registration fee for this general permit is \$250.00.
42. Comment: The 60-day advance notice in Condition 15 is a rather long period to hold up operations, particularly since some of the items (e.g., bonding & insurance) may not be obtainable until after the plant is completed. A more financially feasible time would be 30 days. (2)
- Response: The Department agrees and changed the condition in the general permit to 30 days. In addition, the bonding and insurance requirement have been removed from the general permit.
43. Comment: There is no other mention of the other byproduct of the biodiesel process, soap. I believe it would be acceptable to compost the soap and glycerin, provided the methanol has been removed to an acceptable level. (2)
- Response: Soap from the process would be considered residue or sludge in the general permit. Composting is not covered under this general permit and would require separate authorization, likely through permit-by-rule for captive processing or a separate general permit for non-captive composting operations.
44. Comment: Wastewater discharges from a biofuel or biodiesel facility to a POTW should be in compliance with local industrial pretreatment limits and program requirements mandated by 40 CFR 403 and regulated by US EPA Region III. (5)
- Response: The general permit does not authorize wastewater discharges to POTWs. Wastewater discharges from a facility covered under this general permit would be handled the same as from any other industrial generator. Therefore, the facility would be required to comply with any local industrial pretreatment standards.
45. Comment: Special condition 6 should further require written proof of disposal or reuse agreements for the proper disposal or reuse of waste, glycerin, sludge and wastewater from the permitted facility at quantities equal to those produced. (5)



- Response: The Department decided it does not need tracking records for glycerin that meets the specifications and is not accumulated speculatively and, therefore, no longer considered a waste. However, the Department intends on treating permittees like any other residual waste generator for the waste they generate. Residual waste generators are subject to the reporting and recordkeeping requirements of 25 Pa. Code Chapter 287, Subchapter B. (Note: The Department also does not need tracking records for glycerin that is not a waste under the definition of “waste” in § 287.1 when the glycerin is used as an ingredient in a manufacturing process and is not accumulated speculatively.)
46. Comment: Special condition 23 should further require the name, address, and phone number, and quantity of each waste type disposed of from the permitted facility for the proper tracking of all materials related to the process. (5)
- Response: This information is part of the required recordkeeping for residual waste generators under 25 Pa. Code § 287.55. It is not necessary to also include this requirement in the general permit.
47. Comment: The permittee should provide written notification of intent to use General Permit WMGR109 to the adjacent landowners and provide a 30-day comment period consistent with other Department general permit conditions. (5)
- Response: In the residual waste general permitting program, applicants are required to notify the host municipality and county that they are submitting an application. They are not required to provide notice to all adjacent landowners.
- The Department is not required to hold a public comment period under 25 Pa. Code § 287.642(c) for registration under this general permit.
48. Comment: In special condition 10, the permit refers to “solid waste management activities.” Is all the processing covered by this permit considered solid waste activities? The traditional disposal point for trap grease, for example, is a wastewater treatment facility. (6)

Response: The purpose of Condition 10 of the general permit is to give the Department the right to enter the facility covered by the general permit without obtaining a search warrant and inspect the facility, its records, etc. Activities specifically mentioned in the general permit are considered solid waste activities. Wastewater treatment facilities are outside the coverage under this general permit.

49. Comment: We are tremendously excited that DEP has initiated a general permit for the production of biofuels in Pennsylvania. (6)

50. Comment: We appreciate the potential benefit to producers that could be derived from the establishment of a General Permit. We further recognize the Commonwealth of Pennsylvania as being a national leader in the development of state level public policies aimed at promoting the expanded production and use of biodiesel (SB 255 passed in 2004 and administered by DEP). (18)

51. Comment: It appears your department is embarking on the regulation of biodiesel in Pennsylvania. In the face of impending commercial production coming from all corners of your state, I applaud your efforts. (12)

Response to  
Comments  
49 – 51:

The Department acknowledges and appreciates your comments.

52. Comment: DEP should be trying to help small business and encourage them to grow and flourish, not regulate them to death. (7)

Response: The Solid Waste Management Act requires permits for persons processing waste. The Department initiated this general permit to make it easier for businesses to get the required permit coverage to allow processing of waste to produce biofuel and biodiesel.

53. Comment: Those who brew biodiesel for use on farms, schools, coops, or for building heating purposes should be exempt from permitting. (9,11,12,13,14)

Response: The Department agrees that farm owners producing biodiesel for use on their farms, school districts producing biodiesel for use by the school district, coops for use by their members, and persons producing biofuel for heating their buildings should not require coverage under this general permit. Farm owners producing biodiesel for use on their farms as part of normal farming operations are exempt under Section 501(a) of the Solid Waste Management Act, as amended. The Department is only requiring commercial processors in the business of selling the product biofuel to register under this general permit. The Department has included a provision that noncommercial processors may be required to register under this general permit if the Department determines their activities are causing harm, creating a nuisance or threatening human health, safety, or the environment.

54. Comment: Do producers of ethanol fuel have similar regulations? (11)

Response: If waste were being processed to produce ethanol fuel, then a similar permit would be required.

55. Comment: What is meant by “accumulated speculatively”? (11)

Response: “Accumulated speculatively” is defined in 25 Pa. Code § 287.1. A simplified meaning would be that at least 75 percent of the off-specification glycerin produced has to be used within a one-year period.

56. Comment: What about waste vegetable oil being made into animal feed? Does it have similar regulations? (11,13,14)

Response: Materials used as ingredients in an industrial process to make a product are not wastes under the definition of “waste” in 25 Pa. Code § 287.1. Waste vegetable oil being used directly as an ingredient to produce animal feed is not considered waste and its use does not require a permit.

57. Comment: Apparently, Pennsylvania has historically categorized plant and animal oil by-products as residual waste. Unfortunately, by implicating these materials as closely regulated waste, Pennsylvania may drive this important industry from its lands. As it stands now, the Residual Waste management program is likely a commerce-stopping impediment. At worst, it will drive business to establish production facilities in nearby states and shun Pennsylvania altogether. (15)

Response: Prior to development of General Permit Number WMGR109, Department staff met with several companies interested in siting biodiesel facilities in Pennsylvania. At each of these meetings, we discussed the need for coverage under a waste general permit if the feedstocks would be considered waste under Pennsylvania regulations. None of these companies said they would not come to Pennsylvania if they needed a permit, and most were supportive of our efforts.

58. Comment: Special Condition 14d requires that the generators of waste be identified as part of the application process. Special Condition number 23 requires the biofuel producer to maintain identifying information of the source of the incoming waste and, for beneficially used biofuel (as opposed to ASTM biodiesel), the using device and facility. Again, this is just not a practical requirement. First, brokers will handle the incoming material, some of which may be from out of state or country, where such records are not required or the source known. Second, consolidation is also likely as there are likely to be many, many small generators, and brokers and transporters will seek to make the markets more efficient. Third, blenders and distributors will handle the retail sale of the product and cannot be expected to collect this information and send it back up the chain, if this industry is to thrive. Once the product is developed as biofuel and sold as a commercial fuel, it becomes part of the fungible fuel supply, and the Department should not be concerned with its ultimate end user. We strongly suggest that the producer's duty should be no more than to record its vendor of the raw material and its customer for initial transfer of the product, and no more. (15,18)

Response: The Department agrees with the commentator on draft Condition 14d and has simplified the registration requirements for this general permit. The registration requirements do not include identifying the generator(s) of the waste to the source(s). However, the commentator has misinterpreted the terms "source" in draft Condition 23 to mean every generator and "each destination" to mean the final destination where it will be used as fuel. The Department realizes the source could be a broker rather than a generator. The destination of the outgoing biofuel and biodiesel has been deleted from the recordkeeping requirements in the general permit.

59. Comment: We do not understand what benefit a visual screening adds. Furthermore, what standard would the Department hold the producer to with regard to what constitutes 'unusual coloration, odor or other indication of contamination or the presence of other wastes or materials'? In the first instance, the appearance of the feedstock will vary widely, including that of color and odor. In the second, in most instances, the feedstock will be loaded from closed tanks, into closed tank trucks, and off-loaded into a closed-loop production system, without any ready opportunity for a visual sampling. Third, even if there was an opportunity for visual inspection, the carriage will frequently be done by contract or common carrier, unable and/or untrained in identification of unacceptable loads. We submit that the requirement for visual inspection does not lend itself to an enforceable standard and is otherwise not practical. (15)

Response: The Department believes permittees would want to make some effort to check that incoming waste is actually what they expect to be receiving as a part of good business operations. Processing unacceptable materials could lead to an increase in the amount of waste to be managed, higher cost of processing, and producing off-specification or unusable fuel. General permits have specified chemical analyses, visual screening, or other methods to check that incoming wastes are acceptable. In the final general permit, the requirement has been changed to require the permittee to inspect incoming waste to give more flexibility. It is not the responsibility of the untrained carrier to conduct this inspection; it is the responsibility of the facility operator, who should have an idea of how the incoming waste should look. It is not the Department's intent to establish enforceable standards, merely to have the permittee take a look at the incoming waste to see that it is what is expected.

60. Comment: The requirements of Special Condition 3 in the permit may be unwarranted and we would ask the Department to remove this requirement. Since biodiesel processing yields can be highly affected by other waste materials in the fats and oils, it is already in the best economic interest of the biodiesel plant to inspect their feedstock upon receipt. The National Biodiesel Board believes that requirements that are considered to be good manufacturing procedures should be implemented by the industry and not specified in this permit. In addition, this requirement is inherently covered in Special Condition 14(c). (18)

- Response: The Department believes the inclusion of the condition supports the good manufacturing procedures implemented by the industry. The registration requirements have been simplified and no longer require submission of a plan for inspecting incoming waste.
61. Comment: Special Condition number 3 requires waste removal 'to the greatest extent practical.' We do not understand the justification of this as a condition. This requirement implements too vague a standard. (15)
- Response: This requirement has been removed from the general permit.
62. Comment: Special Condition 14c requires some sort of plan be established and communicated within an application that addresses screening, managing and rejecting waste; such a scheme is unworkable. We request that these requirements be removed from the General Permit. Or, as an alternative, the conditions could specify that the producer must not be aware that non-compatible waste was purposefully added to the material prior to it acquiring the material. (15)
- Response: This requirement has been removed from the registration requirements under the general permit.
63. Comment: Special Condition 14f requires a PPC plan. Please consider, given the low level of waterway risk, whether the less onerous SPCC plan required by federal regulations would suffice. (15)
- Response: The Department believes the elements in a SPCC plan would cover most elements of a PPC plan and actually contains more requirements.
64. Comment: Special Condition 14o requires irrevocable written consent of the landowner giving the Department permission to enter. As an alternative, please consider the applicant providing a copy of a fully executed lease, evidencing the applicant's fee interest in the property. Since a lease is a fee-hold interest, there should be no need for the landlord's irrevocable consent to entry. (15)
- Response: This requirement has been removed from the general permit.

65. Comment: Special Condition 13 provides that the activities under the General Permit not harm or present a threat of harm to the health, safety or welfare of people or the environment and authorizes the Department to modify, suspend, revoke or reissue if it so finds. This requirement appears to derive from 25 Pa. Code § 287.7(a) and (b)(2)(ii)(A).

Initially, we note that the regulation requires the Department to make an affirmative finding. Section 287.7 provides: " As a term or condition of a general permit for the beneficial use of residual waste, the Department will make a determination that the waste which is beneficially used under the permit ceases to be a waste if it is used in accordance with the terms and conditions of the permit and does not harm or present a threat of harm to public health, safety, welfare or the environment." (Emphasis supplied.) The regulation goes on to state that the Department may make a determination that the material is no longer a waste upon such determination.

By making harm or threat of harm a condition to the General Permit the Department is flipping the regulatory requirement. However, since the determination of lack of harm or threat of harm is a pre-condition to its General Permit determinations, this flipping of the burden appears to be inappropriate. Therefore, this Special Condition should be removed from the General Permit.

In case the Department does not concur in the above suggestion, then our second point with respect to this requirement is the subjective vagueness of the term "threat of harm." The Department presents no guidance of what criteria are relevant to this determination. Therefore, we urge the Department to eliminate this Special Condition 13, being unenforceably vague. (15)

Response: 25 Pa. Code § 287.7(a) and (b)(2)(ii)(A) apply to the Department's determination in Condition 17 that biodiesel and biofuel meeting the specifications in that condition would not harm or present a threat of harm to the health, safety or welfare of people or the environment. They do not apply to the operation of the facility under the general permit.

The condition in the general permit is a standard condition in waste general permits and serves as notice that the Department may take any action it believes necessary to protect human health and the environment. It would be impractical to try to specify every scenario that the Department would consider a threat.

66. Comment: The term “threat of harm” seems to be rather broad and appears to be very subjective. There is considerable concern that the same plant situation could be viewed very differently by separate DEP inspectors. The subjective nature of this term would create considerable uncertainty within the industry. Further, it leaves open the potential for malicious actions to be taken against a biodiesel company. The industry’s fear is that someone who is purposely trying to inflict economic harm on the company because of a grievance with the company or a company employee could raise a fictitious threat of harm claim that could cause interruption of operation and undue economic harm. (18)

Response: This condition in the general permit is a standard condition in waste general permits and serves as notice that the Department may take any action it believes necessary to protect human health and the environment. It would be impractical to try to specify every scenario that the Department would consider a threat. The Department seriously attempts to make consistent and fair decisions in respect to these matters. Modifying, suspending or revoking the authorization granted in a general permit is beyond the authority given to the Department’s inspectors and would require action by management. Finally, whether this condition is or is not part of the general permit, the Department would be required to investigate any complaint under 25 Pa. Code § 287.651(b) and take appropriate action, which could include modifying, suspending or revoking the authorization granted in a general permit.

67. Comment: Under Special Condition number 5, how is the producer to determine whether waste is 'mixed' with prohibited waste? We suggest that this condition be eliminated or changed to a requirement that the producer does not have a reasonable basis to know that its residual waste feedstock is a mixture of residual and prohibited waste. (16)

Response: Condition 2 of the final general permit requires inspection of incoming waste. If wastes other than what are approved for processing in this general permit are discovered during this inspection, the shipment should be rejected. Condition 3 applies to the permittee and is merely stating that he or she should not mix un-approved waste in with approved waste for processing.

68. Comment: Since feedstocks covered under this permit are inherently variable, we would urge the Department to allow the characterization of feedstock composition and properties in Special Condition 14(c) to include a range of values for the properties described. (18)



- Response: Given the nature of the waste feedstocks covered under the general permit, we believe that very little would be gained by the Department from either chemical analyses or a composition range. This requirement has been removed from the general permit.
69. Comment: Special Condition 16 of the permit is unwarranted and we would ask the Department to remove this requirement. The National Biodiesel Board believes that requirements that are considered to be good manufacturing procedures should be implemented by the industry and not specified in this permit. (18)
- Response: The Department believes the inclusion of the condition supports the good manufacturing procedures implemented by the industry. The requirement has been modified to require inspection of equipment during processing activities instead of daily inspection.
70. Comment: This requirement in Special Condition 23 for the incoming waste is inherently covered in section 14(d). (18)
- Response: The registration requirements for this general permit have been simplified and no longer require identification of known sources of waste at the time the registration is submitted. Condition 8 of the final general permit contains recordkeeping requirements, including the sources of waste actually accepted at the facility. The Department believes this requirement will be considered to be good business practice and will not create an extra burden on the industry.
71. Comment: The National Biodiesel Board also wants to make sure that the volume of fuel covered under the testing protocol can be determined by the producer. For example, a biodiesel plant may make fuel in 1,000 gallon batches. However, those batches are then transferred to a 10,000 holding tank. Once that tank is full, additional fuel is not moved into that tank until the tank is deemed empty. Since the tank accepts no additional fuel until it is deemed empty, testing of the material in the holding tank should satisfy this requirement. (18)
- Response: The general permit is silent on testing batches versus holding tanks. Permittees have the latitude of testing, as they deem appropriate.