

Environment Agency Statement regarding Crouchland Farm, Rickmans Lane, Kirdford, Billingshurst, West Sussex, RH14 0LE

Chichester District Council Planning Committee of 17 October 2018

Background

This submission is in response to a request by the Director of Planning and Environment, Chichester District Council, to provide clarification from the Environment Agency with respect to the environmental risks associated with decommissioning the anaerobic digestion plant at Crouchland Farm.

Crouchland Biogas Limited (in administration) holds an environmental permit, granted by the Environment Agency, which allows the storage of waste produced by the anaerobic digestion process (digestate) in lagoons before being spread on land, in 'deployments'. These deployments require the approval of the Environment Agency and must be for agricultural benefit.

Digestate is a nutrient rich material that can be either solid, sludge or liquid. It may produce biogas which is a mixture of gases predominantly consisting of methane and carbon dioxide. 'Lagoon 3' at Crouchland Farm contains about 53,000 cubic metres of digestate.

Deployments of digestate are usually restricted to the summer months as this reduces the risk the digestate mixing with surface water on fields and running off into watercourses. The Environment Agency prosecuted Crouchland Farms Limited for an unauthorised discharge from such a winter deployment which polluted the River Kird in 2013.

The Environment Agency is conducting 2 investigations into Crouchland Biogas and/or Farms Limited regarding serious pollution incidents in 2015 and 2016 involving digestate. We cannot comment further on these investigations for legal reasons.

Legal hazard

The environmental permit covering Lagoon 3 will cease to exist if it were to be disclaimed by FRP Advisory as 'onerous property' and if the landowner becomes bankrupt (see *Celtic Extraction, 14 July 1999, Court of Appeal*).

Decommissioning the plant and reducing the environmental risks

Crouchland Biogas Limited is in the process of decommissioning the anaerobic digestion plant. Whilst the permit exists, the Environment Agency's role is to ensure that the operator continues to comply with the conditions of the permit and that decommissioning occurs in a manner which protects communities and the environment. In doing so, we have a duty to have regard to the 'Regulators' Code' and to the Government's 'Growth Duty', weighing up the costs and benefits of our regulatory requirements.

FRP Advisory, administrator of Crouchland Biogas Limited, has employed TK Law to manage the decommissioning process. The Environment Agency's view is that TK Law is entirely separate from the previous operator of the anaerobic digestion plant. We welcome TK Law's involvement as an opportunity to permanently resolve the present environmental risks.

The Environment Agency is concerned regarding the structural integrity of Lagoon 3, which is full. Certain parts of the construction of this lagoon are not fully understood. As built drawings have not been provided, despite our service of a notice requiring this, in 2015.

We have commissioned an engineer's report on integrity of Lagoon 3, drafted 10 September 2018, which is enclosed. The report is written by a 'Panel Engineer'. Such engineers support reservoir owners in their duty to manage risks from these structures, regulated by the Environment Agency.

We believe that there is a risk that containment of the lagoon may fail. Our assessment of the reasonable worst case scenario is that failure of the lagoon might lead to sudden inundation by digestate to property and public spaces. It could also cause serious land contamination and pollution of the water environment.

There is a risk that without expert management, gases created by digestate may be emitted. Methane is a flammable gas which may create an explosive mixture if contained in an uncontrolled environment in the presence of air. Carbon dioxide can cause asphyxia if allowed to accumulate in a confined space.

Management and decommissioning of Lagoon 3

We believe that risks can be effectively managed by regular, frequent inspection of the bund, management of surface water collecting above the lagoon's cap and control of gas collecting under the cap. Risks can be reduced by lowering the level of digestate in the lagoon and shoring up the engineered bunds. Risks would be removed by emptying the lagoon.

TK Law has shown us evidence that tanks used in the anaerobic digestion process contained glass and plastic. This was discovered during decommissioning. The community had previously drawn our attention to plastic contamination and we have confirmed its presence in some deployments (although a degree of contamination is allowed).

Should the digestate which was produced by the process and then stored in Lagoon 3 be significantly contaminated it may be unsuitable for spreading on land in deployments. We estimate that the cost of disposal of this contaminated digestate to commercial landfill is approximately £10M.

We believe that this cost would be significantly reduced and environmental benefit gained by pre-treating the digestate prior to spreading on land for the benefit of agriculture. This treatment could be provided for by using the existing system of pipes, tanks and equipment which were part of the anaerobic digestion process.

Once the liquid content of Lagoon 3 has been removed the remaining sludge will need to be left to dry out before disposal. This is likely to be achieved after a period of warm, dry weather over one or more summer seasons.

We are unable to specify how long it will take an operator to empty the lagoon as it depends on many factors. Based on our understanding of the complexity involved, the deadline of 20 May 2021 proposed by FRP Advisory in its letter to Chichester District Council of 01 October 2018 is reasonable.

Environment Agency Position

Should the permit cease to exist, the Environment Agency would have no legal means of ensuring safe management or remediation of Lagoon 3. The Environment Agency has no duty to carry out works should the permit cease and the site be abandoned

We support the recommendation of Chichester District Council's planning officers to extend the period for compliance with the Enforcement Notices until May 2021, detailed in the Planning Enforcement Report. This step might help to secure continued private ownership of the lagoon and therefore continuation of the decommissioning process in a manner which manages the risks to the environment.