

**SCRUTINY
30 NOVEMBER 2015**

ANAEROBIC DIGESTERS

Cabinet Members Cllr Richard Chesterton and Cllr Neal Davey
Responsible Officers Head of Planning and Regeneration and Head of Human Resources and Development

Reason for Report: To respond to Scrutiny Committee's request for a report on anaerobic digesters in order to , the.

RECOMMENDATIONS:

- 1. That a request is made to the Environment Agency for the opportunity for MDDC to feed into the environmental permitting regime and that a copy of the approved permit is given to this authority.**
- 2. That where enforcement issues are raised with an AD plant, coordination take place between relevant agencies and that MDDC take a lead role in that coordination.**
- 3. That a review of the scope of planning conditions to control AD plants be undertaken in order to develop best practice for future applications.**

Relationship to Corporate Plan: Corporate Plan objectives include those relating to 'Caring for the Environment'.

Financial Implications: These relate primarily to planning decision making and the risk of a cost award against the authority at appeal if it is found to have acted unreasonably in relation to the refusal of planning permission or inappropriate application of conditions. Financial implications may also arise from fines in relation to court action or from mitigation measures in the event of proven maladministration on behalf of the Council.

Legal Implications: Regulation and control of AD plants is multi-layered in that it involves a wide range of statutory powers spread across several agencies beyond the scope of MDDC. Understanding the extent and enforcement of legal powers is complex.

Risk Assessment: Due to the complexity of control and enforcement regimes between different agencies there is a risk that poor communication or lack of liaison between these bodies may result in poor control of such facilities or under enforcement. In turn this could lead to successful challenge at planning appeal, in court or via the Local Government ombudsman and reputational risk.

1.0 Background

1.1 At the meeting of Scrutiny Committee on 10th September 2015 public concerns over operational anaerobic digester schemes in respect of noise, smell, pollution and traffic were discussed. Members also heard public questions on these matters focussed around impact upon the Parishes of Nomansland, Puddington, Templeton and Rackenford. It was resolved that a report be prepared to address the following issues in connection with anaerobic digesters (AD):

i) What was being done to help local communities that had reported issues regarding Anaerobic Digesters to both the Planning and Environmental Enforcement Services;

ii) What work was taking place regarding this to liaise with other authorities, such as the Environment Agency;

iii) That lessons to be learnt from this process.

1.2 Issues raised at the meeting in public question time may be summarised as being impacts upon the local community in relation to:

i) Traffic movements to and from the site in relation to the importation of feedstock for AD plants and export of digestate with associated noise, disturbance and vibration.

ii) Noise from AD plant operation.

iii) The nature of traffic associated with AD plants – large agricultural vehicles and HGVs creating an impact upon highway safety and damage to rural roads together with banks and verges. That vehicle movements are operating over large distances.

iv) Pollution incidents affected rivers and streams from silage effluent, slurry and liquid digestate as a result of spills and spreading.

v) Pumping of slurry resulting in noise and odour.

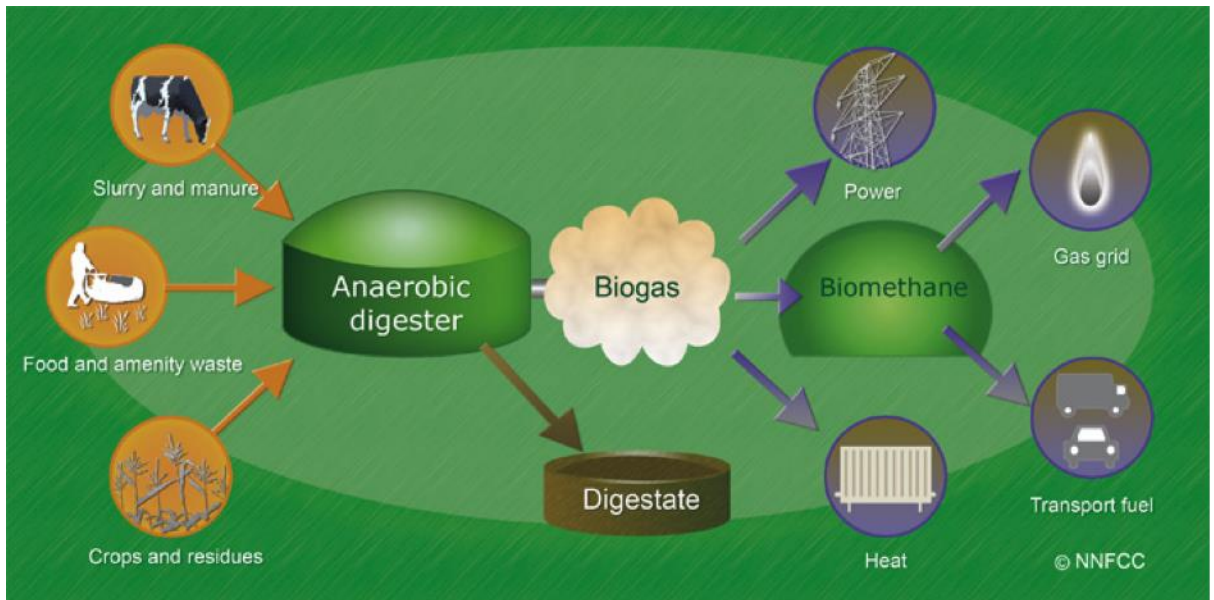
vi) Storage of slurry, digestate and chicken litter resulting in odour.

vii) Concerns over public health and biosecurity as a result of organisms and cross contamination.

1.3 Members of Scrutiny Committee therefore wished to understand in more detail control measures available, areas of responsibility between different organisations and how issues and complaints can be investigated. Furthermore they also wished to understand how the different relevant organisations can work together on such matters and how the experiences of local residents to date can be addressed and what changes can be made to working practices, control and enforcement as a result.

2.0 **Introduction to the technology: what is anaerobic digestion?**

2.1 Anaerobic digestion is the process by which organic material is broken down by micro-organisms in the absence of oxygen. The process begins when biomass such as slurry, manure, crops or food waste is put inside a sealed digester tank. Naturally occurring organisms digest the biomass releasing a methane rich biogas that can be used to generate renewable heat and power together with digestate which being rich in nutrients may be used as fertiliser.



- 2.2 Digestate comprises left over indigestible material and dead micro-organisms and may be used instead of synthetic fertilisers. It can be used whole, spread on land with tankers or umbilical pipe lines or separated into liquor and fibre. The liquor can be spread more easily, whilst the separated fibre can be used as soil conditioner or after further aerobic composting to stabilise it as a material to make a compost product.
- 2.3 Biogas may be either burned on site to generate heat, power or both (Combined heat and power CHP) or alternatively upgraded to biomethane by the removal of other gases for injection into the national gas grid or used as a road fuel.
- 2.4 The Government published the 'Anaerobic Digestion Strategy and Action Plan' in June 2011 demonstrating its support of anaerobic digestion technology as a means of waste management and heat / electricity generation throughout the UK.

3.0 Schemes in Mid Devon.

- 3.1 Several AD schemes in Mid Devon have planning permission, or are currently in process of being assessed:

Mountstephen Farm, Uffculme:

09/01689/FULL Erection of an anaerobic biodigester and associated structures for processing of organic farm waste. Granted by MDDC, operational.

Ennerleigh Farm, Washfield

10/00302/FULL Change of use of agricultural land to accommodate the siting of 12 underground anaerobic biodigester tanks, and erection of a plant room. Granted by MDDC

Menchine Farm, Nomansland:

10/00956/DCC County Matter application for erection of anaerobic digestion plant, ancillary equipment and associated works. Refused by DCC, dismissed at appeal.

12/01659/MFUL Erection of an Anaerobic Digestion Facility. Granted at appeal.

14/00575/MFUL Erection of an Anaerobic Digestion Facility (Revised Scheme). Granted by MDDC. Operational under this permission.

14/01915/FULL Variation of Condition 10 of Planning Permission 14/00575/MFUL to allow for the erection of an Anaerobic Digestion (1,000Kw installed capacity) Facility. Appeal in progress.

15/00573/FULL Erection of new building for processing digestate fibre in association with existing AD plant. Pending

Edgeworthy Farm, Nomansland:

Erection of an anaerobic digester, associated equipment and infrastructure. Refused by MDDC. Granted at appeal.

Red Linhay (Hartnoll Farm), Halberton:

13/01605/MFUL Erection of a 500kW anaerobic digester and associated works with 4 silage clamps. Granted by MDDC. Under construction.

15/01034/MFUL Erection of a 500kW anaerobic digester and associated works with 4 silage clamps. Revised Scheme to include the change of orientation of the layout and installation of 2 driers. Pending.

Lloyd Maunder Road, Willand:

DCC/3725/2014 Construction of 2MW Anaerobic Digestion Plant with new access road and weighbridge on land adjacent to existing Abattoir at Lloyd Maunder Road, Willand and construction of two bay silage clamp with hardstanding and turning area. Granted by DCC

15/00769/DCC County Matter Application for installation of a bio-refinery unit (multi-stage anaerobic digestion system connected to a combined heat and power unit) to treat the organic waste produced by the factory, and associated temporary siting of a portable cabin for the duration of the construction. Granted by DCC

DCC/3797/2015 Rerouting of the access road into the site of the Willand Anaerobic Digestion Plant (DCC/3725/2014), extending the red line to better accommodate the road and embankment and for the relocation of the pipe from the attenuation pond to the stream. Granted by DCC

4.0 Roles and responsibilities

4.1 MDDC as Local Planning Authority

4.1.1 The Planning Service at MDDC is responsible for assessing and determining planning applications for AD plants and associated development where feedstock for such schemes is not predominantly waste disposal, but instead

from sources such as crops. The planning application will involve assessment of a range of issues including impact upon residential amenity as a result of noise, odour; nuisance and disturbance; landscape and visual impact, highways and access, drainage, ecology, pollution and contamination, archaeology, appearance and character.

- 4.1.2 The planning process has requirements for notification and consultation on the application. This involves liaison with a range of different organisations both formally as part of the consultation process, but also more informally following up issues raised within consultation responses and as part of wider representations raised during the assessment of the planning application. The Planning Service works closely with other MDDC services such as Environmental Health over potential public health and amenity / nuisance issues; together with other organisations such as the DCC Highway Authority over access and transport considerations and the Environment Agency over environmental protection and waste management.
- 4.1.3 Planning applications must be determined in accordance with the development plans unless material considerations indicate otherwise. Assessment is made against planning policies also taking into account national planning guidance. For such schemes it is often the case that a 'planning balance' exercise is undertaken whereby the benefits of the scheme are weighted against the disbenefits on coming to a conclusion whether to grant permission. Planning permission is granted for the specified development on the particular site and is normally not personal to a particular applicant. Accordingly once granted, planning permission does not have to be implemented by the original applicant, but may be by a different party. The emphasis in the assessment of a planning application is therefore on the development and site in question rather than on the applicant.
- 4.1.4 Larger schemes may be required to be accompanied by an Environmental Impact Assessment (EIA) which seeks to understand comprehensively the likely impact of the development upon the environment. This is formal process where significant environmental effects are anticipated. Whether the development is subject to EIA is established through a scoping exercise for which Government advice deals with scale and nature of the development, sensitivity of the area and the scale / nature of likely impacts.
- 4.1.5 Planning permission may be granted subject to conditions. Conditions are required to meet a series of tests. They may only be imposed where they are necessary, relevant to planning and the development to be permitted; enforceable; precise and reasonable in all other respects. Planning conditions requiring compliance with other regulatory requirements such as the Environmental Protection Act, waste regulations or terms of an environmental permit (all regulated by other bodies) do not meet the test of necessity and should not be imposed.

4.2 MDDC Environmental Health (Public Health Services)

- 4.2.1 The Environmental Health team have a key consultation role regarding the determination of planning applications for AD plants, poultry installations and farm storage facilities. They provide advice on the environmental protection

matters, private water supplies and nuisance issues that could arise at sensitive locations in the vicinity of the proposed development. The focus is on potential impacts to public health in addition to nuisance or amenity issues. In particular this helps to support decisions on the general principle and suitability of land-use proposals at specific locations. Where information is available, potential cumulative impacts from existing or approved facilities in the surrounding area are taken into account in the advice provided. Environmental Health also have a role in providing input into the formal determination (pre-approval) of the scope of any Environmental Impact Assessment (EIA) that may be required for larger proposals and the technical evaluation of the subsequent assessments when submitted. In accordance with this role there is a well-established consultation mechanism in place and an effective working relationship with colleagues in Planning.

- 4.2.2 Environmental Health is also the enforcing authority for Statutory Nuisance legislation. These are essentially reactive powers to investigate complaints of odour, noise, dust and other nuisances. Where a nuisance is proven (and this is to a criminal evidence threshold) there are related powers to serve abatement notices requiring action to cease the nuisance and ultimately prosecute in the event of non-compliance. These powers do not apply where the source of the complaints is a site or facility which holds an integrated environmental permit issued by the Environment Agency (more below), in which case the Agency is the sole regulator. Where Environmental Health receives complaints that are ultimately the responsibility of the Agency or vice versa then there is a duty to share information.
- 4.2.3 In respect of AD and related activities then certain on-farm storage facilities for slurry or AD digestate and other activities can give rise to nuisance (typically noise and odour) but may not require an Environment Agency permit. If this is the case the Environmental Health statutory nuisance provisions apply and any complaints would be investigated in the same manner as any other agricultural premises or activity. Non-permitted sites include those where the storage point is considered to be on-farm i.e. the final point of storage on that farm to be spread directly onto the land. Slurry is also often used alongside chicken waste as biodegradable feedstock for the AD process and as indicated above, digestate is the non-biogas material remaining after digestion has taken place. If the storage involved digestate which came from an AD plant where animal by-products were used a permit would still be required. Any complaints in relation to noise or odour from farming activities arising from the preparation of any feedstocks for an AD unit will be dealt with by Environmental Health, again under statutory nuisance legislation.
- 4.2.4 Given the relative complexity of the legislation Environmental Health maintain a close liaison with field and specialist officers at the Agency over specific complaints and sites.

4.3 Devon County Council

- 4.3.1 Devon County Council has several roles of relevance. The first of these is as waste planning authority where it has responsibility for the determination of planning applications relating to waste development. Where the feedstock for AD plant schemes is predominantly waste, such as the scheme at Lloyd

Maunder Road, Willand planning applications are dealt with by the County Council and MDDC is a consultee in the process.

- 4.3.2 The County Council also has a function as Highway Authority. The Highway Authority is a consultee for planning purposes when the development is likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a classified road or involves the formation of or change to an access. The impact of the proposal upon highway safety is major consideration. The Highway Authority is also responsible for roads maintainable at public expense. Issues in relation to highway safety, condition and damage are dealt with by DCC as part of this role.

4.4 Environment Agency

- 4.4.1 The Environment Agency has a general responsibility for the protection of the countryside and the natural environment. In the context of AD, there are a number of areas of interest ranging from the AD plants themselves and associated or related activities such as intensive poultry installations in addition to manure, slurry/digestate storage, use and land spreading or disposal as waste.
- 4.4.2 For the industrial or intensive agricultural activities then the Agency has specific proactive environmental permitting responsibilities. They issue and regulate integrated permits setting out management and operational controls on emissions from these sites to air, land and water. This therefore includes emissions from chimneys and stacks, releases into rivers and onto land, dust, noise, odour and vibration. The permits are 'living documents' whereby there are provisions to vary or otherwise amend the permit controls in response to changes in best practice, operations and scale etc. Where problems and non-compliance are identified then permits can be used to specify improvement plans. The permits are designed to prevent problems and damage being caused to the environment and local community in the first place. All AD plants whose feedstock contains waste and directly technically linked activities are covered by this regulation in addition to all intensive poultry sites with a combined capacity of 40,000 or more birds.
- 4.4.3 In respect of chicken litter, slurry and AD digestate then the Agency has broad responsibilities under waste management legislation and protecting controlled waters (rivers and groundwater) from pollution. There are relatively complex regulations governing how the Agency determine if a material is classified as waste (therefore has to be transported by a licenced carrier and treated/reused or disposed of at a permitted waste facility) or is exempt and can be used for other purposes such as fertiliser. If material is to be spread on land for agricultural benefit then there are further controls and guidelines that the Agency imposes to protect land and water from contamination and over nitrification included many areas in Mid Devon controlled as Nitrate Vulnerable Zones.
- 4.4.4 In common with powers exercised by Environmental Health, those enforced by the Agency are criminal offences with the according level of evidence proof and prosecution options. There is no formal consultation mechanism put in place locally by the Agency for Environmental Health or the Planning Authority

to comment on the proposed integrated permits and conditions set out therein for relevant sites.

4.5 Public Health England

4.5.1 Public Health England (PHE) is a relatively new agency of the Department of Health. It was set up to bring together public health specialists from a number of organisations into a single body. It has relatively few direct enforcement powers and is largely an advisory and policy body. Its overall function is to protect and improve the national health and wellbeing, and reduce health inequalities. The organisation employs scientists, specialists and researchers to provide expert public health advice. As such, local authorities and NHS bodies with direct health responsibilities such as Directors of Public Health, Public Health consultants, Environmental Health Officers and Doctors etc can use PHE to provide authoritative opinion of local public health concerns and specific case issues. In the context of AD and related activities, the Mid Devon Environmental Health team sought advice from PHE in respect of any potential health impacts arising from the storage and spreading of AD digestate.

4.6 Driver Vehicle Standards Agency (DVSA)

4.6.1 DVSA is another recently formed agency, in this case sponsored by the Department of Transport. They were created by the merger of the former DVLA and VOSA agencies. As such they have a wide responsibility to improve road safety nationally by setting standards for driving and motorcycling, and making sure drivers, vehicle operators and MOT garages follow roadworthiness standards. They also provide a range of licensing, testing, education and enforcement services.

4.6.2 In the context of issues being discussed in this report, DVSA has a role in enforcing any relevant driver and vehicle standards in relation to road transport used in connection with AD plant and poultry farming activities plus land-spreading and other material movements whilst those vehicles are on the highway. This can include vehicle design and maximum gross weight requirements/limits in addition to driver hours. There is some mutual enforcement and joint working with the Police service. The DVSA do not enforce restrictions on the use of lower-duty rated red diesel and this is a matter for the HMRC.

5.0 Enforcement of control

5.1 Scrutiny Committee has requested that this report address the following question:
What was being done to help local communities that had reported issues regarding Anaerobic Digesters to both the Planning and Environmental Health Services.

5.2 Environmental Health

- 5.2.1 In accordance with role and responsibilities of this team and outlined above, Environmental Health have provided a range of proactive and reactive interventions to help those affected by the reported issues and also to support other agencies in their work.
- 5.2.2 Enforcement activities have necessarily focussed on activities not encompassed by a permit issued by the Environment Agency (or other functions in their responsibility) or those relevant to planning enforcement. Attention has therefore been upon slurry/digestate storage facilities and linked farm based activity. A number of odour and noise complaints have been subject to lengthy investigations. As a result Statutory Nuisance was established at one location and an Abatement Notice served in respect of noise arising from the use of trailer mounted slurry pumps. This action was substantially successful in mitigating problems arising from the specific operations being carried out at the time. However, following a change in operator and operations there is an on-going investigation of the impact of liquid digestate storage at the same location and the relevant company informed formally of potential nuisances occurring as a result of their activities. They have also been advised that noise and odour monitoring and surveillance (including the use of recording equipment) would be undertaken by Environmental Health staff and at affected residential properties if further complaints were received. This was an essential step in the process of undertaking additional enforcement action should a further nuisance be proven. Since this communication in August, monitoring equipment has been held on standby to facilitate rapid deployment. No further complaints have been reported.
- 5.2.3 The Environmental Health team are in on-going dialogue with the other agencies involved and also participated in the multi-agency, member and residents meeting facilitated by MDDC on 2 November 2015.
- 5.2.4 Detailed input has been provided on a number of recent planning applications for AD plants/associated activities in addition to large scale poultry units and biomass boilers. Environmental Health has also investigated the potential health implications of liquid AD digestate examining possible exposure levels and hazards. Further input from Public Health England was requested to evaluate this work and provide any additional relevant advice. Environmental Health has disseminated and explained the relative risks and provided assurances to concerned residents. This has been done directly with correspondents and more widely at public meetings and by sharing information with parish and district councillors, addressing any further queries that have arisen as a result.

5.3 Planning

- 5.3.1 The enforcement of a breach of planning control is an important component of the Planning Service. A breach of planning control arises from either the carrying out of development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted. Local Planning Authorities have the responsibility for the enforcement of planning control in their area when such

enforcement is in the public interest. Guidance on planning enforcement is contained with the National Planning Policy Framework:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.'

- 5.3.2 Development becomes immune from enforcement action if no action is taken within four years in the case of the substantial completion in the case of operational development or ten years for any other breach of planning control (mainly change of use and breach of condition). A range of enforcement tools are available including enforcement notices and the receipt of a planning application to regularise the breach.
- 5.3.3 A range of enforcement related issues have been reported to the Planning Service post planning decision in respect of several AD plants. Investigation has taken place involving site inspection, discussions and negotiation with the applicant and other relevant bodies, assessment of condition compliance and requests for information. In respect of several sites within MDDC's planning jurisdiction revised planning applications have been submitted by the developers in order to seek to regularise breaches of control on earlier applications in terms of compliance with approved plans and/ or conditions. Some of these applications are pending or awaiting the outcome of an appeal process.
- 5.3.4 Environmental Health and Planning Services work closely together over enforcement matters in order to understand the nature or impact of the activity complained about and the most appropriate legal powers in which to address it.
- 5.3.4 The Planning Service is also currently seeking to clarify the scope of enforcement control in relation to AD scheme parameters and conditions as a result of issues raised by complainants and objectors. Legal advice is being sought with the intention that this will feed into the drafting of conditions in future. Cornwall Council has produced a renewable energy planning guidance note on the development of AP plants. Incorporating case studies, it is aimed at providing guidance to developers on the planning issues to be addressed, but also includes generic, template planning conditions. Incorporated as a recommendation within this report is that a review of the scope of planning conditions to control AD plants be undertaken in order to develop best practice for future applications. It is envisaged that this will involve liaison with other planning authorities in the region.

5.4 Liaison with other relevant organisations

- 5.4.1 Scrutiny Committee has requested that this report address the following question:
What work was taking place regarding this to liaise with other authorities, such as the Environment Agency;

5.4.2 Liaison already takes place with other relevant authorities as referred to above; particularly at stages in the planning process via statutory consultation and reactively in connection with specific complaints. A multi-agency meeting on AD plants was recently held, the main focus of which was enforcement of control. However, it is acknowledged that liaison is greater between some external authorities than others and therefore there is room for improvement. Recommendations in this report are that a request be made to the Environment Agency for more opportunity for MDDC to feed into the environmental permitting regime. Greater sharing of information (where possible) in respect of approved permits is also requested. It is also suggested that in future where enforcement issues are raised with an AD plant, more structured coordination take place between relevant agencies and that MDDC take a lead role in that coordination.

Contact for more Information: Mrs Jenny Clifford, Head of Planning and Regeneration (01884) 234346 / jclifford@middevon.gov.uk or Simon Newcombe, Public Health and Professional Services Manager (01884) 244615 / snewcombe@middevon.gov.uk

Circulation of the Report: Councillors Richard Chesterton and Neal Davey

List of Background Papers: Scrutiny Committee 10th September 2015

The development of anaerobic digestion plants: Renewable Energy Planning Guidance Note 4 (Draft), Cornwall County Council
<http://www.cornwall.gov.uk/64BD9301-283F-4BA6-AC94-49967639C7E1/FinalDownload/DownloadId-8DE7B84684C912D54C954DE6F43B0D22/64BD9301-283F-4BA6-AC94-49967639C7E1/media/3626641/4-AD-V2-Jul-2012-WATERMARKED.pdf>

Anaerobic Digestion Strategy and Action Plan: A commitment to increasing energy from waste through Anaerobic Digestion, DECC and DEFRA
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69400/anaerobic-digestion-strat-action-plan.pdf

Statutory nuisance provisions and how Councils deal with complaints.
<https://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints>

Standard rules and Environmental Permitting of the biological treatment of waste by the Environment Agency.
<https://www.gov.uk/government/collections/standard-rules-environmental-permitting#biological-treatment-of-waste>