

## Compliance Assessment Report CAR\_NRW0042068

**Permit being assessed:** AB3090CC.

For: Argoed Farm AD Facility, held by Derwent Renewable Power Ltd

At: Argoed, Trefeglwys, Caersws, Powys, SY17 5QT.

**Type of assessment carried out:** Site Inspection, Reason: Routine.

On 15/06/2023 between 11:00 and 12:50.

Parts of permit assessed: Surface water drainage; containment and control

**NRW Lead Officer:** Malcolm Dines, accompanied by Liz Park.

**Report sent to:** Roger Hughes, Owner on 21/07/2023.

### 1. Summary of our findings (full details in section 4)

| Part of permitted activity assessed (criteria)                                                                 | Assessment result        | Permit condition |
|----------------------------------------------------------------------------------------------------------------|--------------------------|------------------|
| B4 - Infrastructure - Containment of stored materials                                                          | C4 No impact (Suspended) | 2.4.1            |
| C1 - General Management - Staff competency/training                                                            | C3 Minor                 | 1.1.1(b)         |
| C2 - General Management - Management system and operating procedures                                           | C3 Minor                 | 1.1.1(a)         |
| E2 - Emissions - Land and groundwater                                                                          | C3 Minor                 | 1.2.1            |
| E3 - Emissions - Surface water                                                                                 | C3 Minor                 | 3.1.1            |
| G4 - Monitoring and Records, Maintenance and Reporting - Reporting and notification to Natural Resources Wales | C4 No impact             | 4.2.2            |

Result types are explained in more detail in the 'Important Information' section below.

| Total number of non-compliances recorded | Total non-compliance score |
|------------------------------------------|----------------------------|
| 6                                        | 16.1                       |

How we use the non-compliance score to calculate your annual fee is explained in the 'Important Information' section below.

### 2. What action is required?

| Criteria | Action needed                                                                                                                                                           | Complete by |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| B4       | Comply with the Regulation 7 notice and ensure that the silage clamp is compliant with The Water Resources (Control of Agricultural Pollution)(Wales) Regulations 2021  | 07/09/2023  |
| C1       | Ensure that site attendance requirements for the TCM are complied with and ensure that your workforce is sufficient to enable you to comply with all permit conditions. | 07/09/2023  |
| C2       | Fully review, update and submit Environment Management System as required previously.                                                                                   | 07/09/2023  |

| Criteria | Action needed                                                                                               | Complete by |
|----------|-------------------------------------------------------------------------------------------------------------|-------------|
| E2       | Ensure that wastes generated by your activity (Digestate) is treated in accordance with the waste hierarchy | 01/08/2023  |
| E3       | Prevent all point source discharges to water                                                                | 01/08/2023  |
| G4       | Submit all outstanding waste returns                                                                        | 31/08/2023  |

Action criteria codes are listed in the 'Important information' section below.

### 3. What will happen next?

Any non-compliance we have identified and recorded on this form is an offence. It can result in criminal prosecution and/or suspension or revocation of your permit.

#### **You are non-compliant with your permit.**

**At this time, we are issuing you with a warning for the non-compliance recorded above. Warnings may influence future enforcement response for continued or further non-compliance.**

This statement does not stop us from taking additional enforcement action if further relevant information comes to light or offences continue.

### 4. Details of our assessment

This was a routine announced compliance visit carried out by Malcolm Dines and Liz Park, who met with Roger Hughes, the site owner and Technically Competent Manager. The weather was warm and dry and there had been storms in the area in the previous week.

The main purpose of the visit was to assess that there were no point source discharges of effluent to surface water via the surface water drainage system and to discuss progress with compliance with the Regulation 7 Notice requiring improvements to the silage clamp which Natural Resources Wales (NRW) have served Derwent Renewable Power Ltd a notice under The Water Resources (Control of Pollution)(Silage and Slurry) Regulations 2010.

Due to NRW prevented Officers from attending sites where gas monitors might be required and this includes anaerobic digestion plants, it was only possible to assess the surface water discharge point as this is located approximately 50 metres from the site boundary. To access the surface water discharge point, the Officers approached the site from the east from the neighbouring property and followed the watercourse upstream to the headwall.

#### **Permit Breaches**

B4 - Containment of Stored Materials - Cat 3 (Suspended); Permit Condition 2.4.1

You were given this category 3 breach under the above condition because your silage clamp does not comply with the requirements of The Water Resources (Control of Agricultural Pollution)(Wales) Regulations 2021. You have subsequently been issued with a Regulation 7 Notice under The Water Resources (Control of Pollution)(Silage and Slurry)(Wales) Regulations 2010 that requires you to improve the silage clamp to meet current regulatory requirements therefore, this means that the silage is not securely

contained. As the clamp is currently empty and you are not allowed to use the clamp until it meets current requirements the score is suspended until the Regulation 7 Notice deadline. However, if you fail to comply with the notice, the score will be un-suspended. Additionally, if you store silage in the clamp before you have complied with the requirements of the Regulation 7 Notice it would be reasonably foreseeable that the risk of pollution to the environment will be high and you will receive a higher score in accordance with NRW's scoring guidance.

**Action - Comply with the requirements of the Regulation 7 Notice by 7th September 2023.**

C1 - Staff Competency and Training - Cat 3: Permit Condition 1.1.1 (b)

You were given this Category 3 breach under the above condition because during the compliance visit you admitted that you had prioritised the construction work on the your new Broiler Unit over complying with the Regulation 7 Notice that had expired. You have been previously advised that NRW were concerned about that this site is being run by yourself and one other, part-time, member of staff and that NRW may require you to employ more staff to ensure that you are complying with permit conditions, especially those relating to the administrative compliance work. Since then you have repeatedly failed to comply with the requirement to submit quarterly waste returns and to review and update the Environmental Management System for the site. During this visit you also admitted that you are not carrying out daily checks as required. If you fail to comply with the actions set out on this compliance report, NRW may consider serving a notice to ensure that the site is adequately staffed and resourced.

Additionally, in light of the repeated failure to comply with compliance actions, NRW have reviewed the requirements for site attendance for the Technically Competent Manager (TCM). Page 38 of "How to Comply with your Environmental Permit" sets out the requirements for site attendance including that the TCM must be in a position to direct activities on-site. Recently NRW were not able to meet with you to discuss site compliance as you were on holiday for a week. Your site has a minimum attendance requirement of 25% of the time that the site is operational. NRW consider that "operational" means when the site is undertaking any process that should be under the day-to-day control of the TCM. As the AD process runs 24 hours a day, this means that you must be at the site, or within a reasonably close distance to the plant for 42 hours a week. However, at present, we will consider that for site attendance purposes, the site is "operational" for 10 hours a day, meaning that the TCM must attend site, or be available to attend site 17.5 hours a week. You must keep records to demonstrate this.

At present you do not have an adequate EMS, your compliance rating indicates that you do not have adequate management control of the site. If your compliance record improves, NRW may consider reducing the amount of hours that the TCM is required to be available to attend the site.

If your TCM is not able to meet the required number of hours in any given week, you must employ a suitably qualified person to provide cover for the time required.

**Action - Ensure that the TCM site attendance requirements are met and recorded and comply with all compliance actions on this CAR form by 7 September 2023**

**C2 - Management system and operating procedures - Cat 3; Permit Condition 1.1.1 (a)**

You were given this category 3 breach under the above condition because Compliance Report CAR\_NRW0040512 required you to review and update your Environmental Management System for the site and to then submit it to NRW for review before 31 January 2023 and you have failed to comply with this action. During this visit you admitted that you are not carrying out daily checks on the surface discharge point despite knowing that there have been point source emissions from this discharge previously and despite this being brought to your attention by NRW as something that was essential to carry out. You also stated that have not carried out any maintenance on the interceptor or hydraulic brake and when we inspected the bypass separator, you did not know the manufacturer of the separator, nor fully understand how the it works.

Your Environmental Management System is significantly out of date it has not been updated since the permit was issued, still makes reference to procedures relevant to the previous owners of Derwent Renewable Power Ltd and does not take into account changes in site infrastructure and processes following completion actions carried out over the past year. The update must also include a section that clearly defines the roles and responsibilities that staff have at your site as set out on Page 36 of the NRW guidance document "How to Comply with your Environmental Permit".

It is starting to feel as though you prioritising your other business interests over the management of the AD plant and compliance with your Environmental Permit. Given that the greatest environmental risks posed by Anaerobic Digestion plants are the failure to manage the process correctly, it would be reasonably foreseeable to consider that, following pollution incidents caused by poor site management, the repeated failure to update your management system could result in a significant pollution of the environment and so NRW may score any future failure to comply with this requirement higher than the current Category 3 score.

**Action - Submit a fully updated Environmental Management System by 7 September 2023.**

**E2 - Emissions to Land - Category 3; Permit Condition 1.2.1**

You have been given this category 3 breach under the above permit condition because during the site visit it was observed that you had spread digestate on the field between the AD plant and the watercourse, without leaving a buffer zone. As you use precision spreading equipment, under GAEC 1 of the Cross-Compliance Scheme you must not spread organic fertilizer within 6 metres of surface water.

Permit condition 1.2.1 requires you to take appropriate measures to ensure that the waste hierarchy referred to in Article 4 of the Waste Framework Directive is applied to the generation of waste by the permitted activities, in your case this means the digestate that you spread to your land. By failing to comply with GAEC 1 and spreading digestate within 6 metres of surface water, it is being spread on land where it is not required it is a disposal activity and means that you are failing to comply with waste hierarchy as this material could be spread on land where it is required.

**Action - Ensure your wastes are managed in accordance with the Waste Hierarchy by 1st August 2023.**E3 - Emissions to Water - Category 3; Permit Condition 3.1.1

You have been given this category 3 permit breach under the above condition because when the headwall was inspected, a small amount of effluent that appeared to be digestate, was being discharged from the surface water drain. There was also some sewage fungus in the watercourse around the point of entry of the effluent. At the time of the inspection it was unclear as to why effluent was discharging from the surface water drain. The weather was dry and, although there has been a severe storm in the area earlier in the week, the silage clamps had been empty for several months and so there should not be any effluent to enter drains. Additionally, you had flushed out the whole of the surface water drainage system twice in the past 12 months as a requirement of a previous compliance action.

When we inspected the interceptor chamber for the surface water system - this is located outside the site boundary and immediately before the hydro-brake that controls the flow of water that discharges to the watercourse - we could see that there was a scum on the surface of the water that appeared to be similar to that seen in silage tanks. It was also observed that liquid was entering the interceptor at regular intervals that appeared to be via a pump as it was preceded by a mechanical noise that sounded like a pump. However, you didn't think that there was a pump or any automated equipment in what you described as a "filter". You did state that you had added two extra rings to the chamber over the winter to increase the height of it to allow you to reprofile the field to allow you to grow maize in the field. When you were asked how often you checked the interceptor or carried out any maintenance you indicated that you had not carried out any maintenance of the interceptor and checked it infrequently.

Drawings submitted as part of the permit application process clearly indicate that between the site boundary and the discharge point, your surface water drainage system includes a Klargest By-pass Interceptor and a Hydraulic Brake. It is clear that you are not sufficiently familiar with this part of your infrastructure to not know the manufacturer of this piece of equipment. A bypass interceptor is designed to allow high flows to bypass the interceptor chamber so as to prevent surface water flooding. This also explains why spills of digestate were able to discharge seemingly unimpeded into the watercourse. It will also mean that when you flushed out the surface water drainage system, this water is likely to have bypassed the interceptor chamber. Therefore, it is likely that silage effluent or digestate remains in the interceptor chamber and you must have this interceptor and hydro brake chambers cleaned out in accordance with the manufacturer's specified procedures.

**Action - Prevent emissions to water by 1st August 2023.**G4 - Reporting and notification to Natural Resources Wales - On-going; Permit Condition 4.2.2

You were given this category 3 breach under the above condition on the last compliance report (ref: CAR\_NRW0040512) because you have not submitted any waste returns since Quarter 4 of 2019. You have still to comply with this action, but it was agreed to extend the deadline until 31st January 2023 along with the deadline for submitting the EMS however

you have still failed to meet this deadline. If you fail to submit all outstanding waste returns by the required date, NRW may serve a legal notice to submit the waste returns. The failure to comply with a legal notice is an offence.

**Action - Submit all outstanding waste returns by 31 August 2023.**

*In this document 'Natural Resources Wales' means the Natural Resources Body for Wales established by Article 3 of the Natural Resources Body for Wales (Establishment) Order 2012*

If you have any queries about this report, or to discuss completion of any actions, please contact the NRW Officer named above.

## Important information

### Legal status of this report

Your permit is issued to you under the Environmental Permitting Regulations. You have a responsibility to comply with the conditions of your permit and prevent pollution/harm of the environment. You must also ensure that you comply with any other relevant legislation that may apply to your site's operations.

This report explains the findings of our assessment and any action you are required to take. We categorise non-compliance using our guidance for assessing non-compliance at regulated sites.

When we find potential non-compliance/s we will normally give you advice on how to maintain compliance.

To correct non-compliance, we may:

- require you to take specific actions
- issue a notice
- review the conditions of your permit.

Any advice and guidance we give will be without prejudice to any other enforcement response that we consider may be required.

### Assessment results and non-compliance categories (used in section 1):

| Assessment result | Description                                                       |
|-------------------|-------------------------------------------------------------------|
| Assessed (A)      | Assessed or assessed in part, no evidence of non-compliance found |
| Action only (X)   | Action only relating to the activity assessment                   |
| Ongoing (O)       | Ongoing non-compliance, not scored                                |

| Non-compliance category    | Description                                                                                                                 | Score |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------|-------|
| C1 Major                   | Potential to have a major, serious, persistent and/or extensive impact or effect on the environment, people and/or property | 60    |
| C2 Significant             | Potential to have a significant impact or effect on the environment, people and/or property                                 | 31    |
| C3 Minor                   | Potential to have a minor or minimal impact or effect on the environment, people and/or property                            | 4     |
| C4 No environmental impact | Non-compliance at a regulated site that cannot foreseeably have any impact on the environment, people and/or property       | 0.1   |

### How we use assessment scores

The number and severity of non-compliances recorded in a year will affect your annual subsistence fee the following year. A non-compliance factor is added to your site's Operator

Performance Risk Appraisal (OPRA) score when we calculate your fee to reflect the additional resource we use to assess permit compliance.

**What are suspended scores?**

In line with our guidance, we may suspend scores for up to six months to allow time for remedial action to be taken. Suspended scores will be re-instated if the action is not completed.

**Full list of Industry and Waste action criteria (used in section 1 and 2):****A: Permitted activities**

- A1 Specified by permit

**B: Infrastructure**

- B1 Infrastructure – Engineering for prevention and control of emissions
- B2 Infrastructure – Closure and decommissioning
- B3 Infrastructure – Site drainage engineering (clean and foul)
- B4 Infrastructure – Containment of stored materials
- B5 Infrastructure – Plant and equipment

**C: General management**

- C1 General management – Staff competency/training
- C2 General management – Management system and operating procedures
- C3 General management – Materials acceptance
- C4 General management – Storage, handling, labelling and segregation

**D: Incident management**

- D1 Incident management – Site security
- D2 Incident management – Accidents, emergency and incident planning

**E: Emissions**

- E1 Emissions – Air
- E2 Emissions – Land and groundwater
- E3 Emissions – Surface water
- E4 Emissions – Sewer
- E5 Emissions – Waste

**F: Amenity**

- F1 Amenity – Odour
- F2 Amenity – Noise
- F3 Amenity – Dust/fibres/particulates and litter
- F4 Amenity – Pests/birds and scavengers
- F5 Amenity – Deposits on road

**G: Monitoring and records, maintenance and reporting**

- G1 Monitoring and records, maintenance and reporting – Monitoring of emissions and environment
- G2 Monitoring and records, maintenance and reporting – Records of activity, site diary/journal/events
- G3 Monitoring and records, maintenance and reporting – Maintenance records
- G4 Monitoring and records, maintenance and reporting – Reporting and notification to Natural Resources Wales

**H: Resources efficiency**

- H1 Resource efficiency – Efficient use of raw materials
- H2 Resource efficiency – Energy efficiency

## Enforcement response

Any permit condition non-compliance is an offence and we may take legal action against you. Action we take can include prosecution, serving a notice on you and/or suspension or revocation of your permit. See our Enforcement and Sanctions Guidance for further information.

## Data protection notice

You should make sure that anyone named in this report knows that the information it contains will be processed by Natural Resources Wales to fulfil its regulatory and monitoring functions and to maintain the relevant public register(s).

We may also use and/or disclose the report in connection with:

- offering or providing you with our literature or services relating to environmental matters
- consulting with the public, public bodies and other organisations (e.g. Health and Safety Executive, local authorities) on environmental issues
- carrying out statistical analysis, research and development on environmental issues
- providing public register information to enquirers
- investigating possible breaches of environmental law
- assessing customer service satisfaction and improving our service
- Freedom of Information Act or Environmental Information Regulations requests.

We may also pass it on to our agents or representatives to do these things on our behalf.

## Disclosure of information – this report will be available to view on-line

If you think this report contains commercially confidential information that should not be placed on our public register, you must contact your local Natural Resources Wales office within **fifteen working days** of receiving this report, using the contact details in the accompanying email or letter. You must give a full explanation of why it should not be added to our public register, including specifying which information is commercially confidential. We will assess your request and respond to you within 20 working days to let you know if we agree to your request.

## What do I do if I disagree with the report or have a complaint?

If you disagree with this compliance assessment report, you should contact the lead officer without delay to discuss your concerns.

If you are unable to resolve the issue with the lead officer or their line manager you should contact our Customer Contact team on 0300 065 3000 (Monday to Friday 08:00 – 18:00), or email [enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk) for details of how to raise your dispute further through our Complaints and Commendations procedure.

If you are dissatisfied with our response, you can contact the Public Services Ombudsman for Wales by phone on 0300 7900203 or by email at [ask@ombudsman.wales](mailto:ask@ombudsman.wales)

## Welsh Language Standards

We are committed to establishing Natural Resources Wales as a naturally bilingual organisation. We will provide compliance reports in your preferred language.