

## The environmental regulation of the production and use of anaerobic digestate from source-segregated biodegradable waste

### Purpose of this position statement

A Quality Protocol setting out end-of-waste criteria for the production and use of anaerobic digestate from source-segregated biodegradable waste is available from our [website](#). As the Quality Protocol is voluntary, the purpose of this statement is to advise our staff and customers on the legal obligations that apply to those who produce anaerobic digestate from source-segregated biodegradable waste.

This position statement provides clarity on how we will regulate:

- the collection and processing of source-segregated biodegradable waste;
- anaerobic digestate that meets the requirements of the Quality Protocol;
- anaerobic digestate that does not meet the requirements of the Quality Protocol.

By complying with the Quality Protocol, producers will have certainty that the anaerobic digestate they produce will be regarded as having ceased to be waste and can be used without the need for waste management controls.<sup>1</sup>

The main purposes of the Quality Protocol are:

- clarifying the point at which waste management controls are no longer required;
- providing holders with confidence that the anaerobic digestate conforms to an approved standard;
- protecting human health and the environment by setting standards for the production and use of anaerobic digestate in designated applications, and describing acceptable good practice for its use.

In summary, the following criteria must be met:

- the anaerobic digestate is produced using only non-waste inputs or the source-segregated waste specified in section 2 of the Quality Protocol;
- the anaerobic digestate meets the requirements of BSI PAS 110;
- the anaerobic digestate is destined for use as in agriculture, forestry or land restoration;
- producers must provide and keep copies of customer supply documentation which includes a statement of conformance with the Quality Protocol;
- producers must obtain certification from an appropriate certification body.

Full details of the requirements are set out in the Quality Protocol, which can be downloaded from our [website](#).

If you intend to export quality protocol compliant anaerobic digestate outside of England and Wales, the receiving country may still consider the material to be waste and so you would need to adhere to the relevant waste management controls.

<sup>1</sup> Waste management controls are not required from the point at which the anaerobic digestate is produced to the standard required by the Quality Protocol.

### How we regulate the collection and processing of source-segregated biodegradable waste for the production of anaerobic digestate

The Quality Protocol does not change the regulatory requirements that apply to:

- the **delivery** and **storage** of source-segregated biodegradable waste for processing;
- the **processing** of source-segregated biodegradable waste to produce anaerobic digestate;
- the **burning** of biogas produced from the anaerobic digestion process.

The source-segregated biodegradable waste must be:

- handled in accordance with the Duty of Care requirements;
- transported by a person who is registered as a waste carrier;
- taken to a suitably permitted or exempt waste facility.

The Environmental Permitting (England and Wales) Regulations 2007 require individuals or companies storing and treating controlled waste to do so under an environmental permit or an exemption. The **storage** of source-segregated biodegradable waste can only take place with an environmental permit, an exemption<sup>2</sup> from permitting under Paragraph 12 or under the provisions of paragraph 50 of Schedule 3 to the Environmental Permitting (England and Wales) Regulations 2007 (see Annex 1).

The **processing** of source-segregated biodegradable waste at an anaerobic digestion plant can only take place with an environmental permit or an exemption from permitting under Paragraph 12 of Schedule 3 to the Environmental Permitting (England and Wales) Regulations 2007. The type of authorisation required will depend on the scale and nature of the processing carried out at a particular plant (see summary in Annex 1).

Note: It is the responsibility of the producer to determine if the facility needs to comply with the requirements of the Animal By-Products Regulations. Should the facility require approval, the approval would be issued by Animal Health and enforced by the relevant Local Authority.

The **burning** of the biogas produced from the anaerobic digestion process can only take place under an environmental permit, or an exemption from permitting under Paragraph 5 of Schedule 3 to the Environmental Permitting (England and Wales) Regulations 2007 (see Annex 1).

### How we regulate anaerobic digestate that meets the requirements of the Quality Protocol

Producers and users are not obliged to comply with the Quality Protocol. If they do, they will benefit from the certainty that we will not regard the anaerobic digestate as waste. This means it can be used without the need for waste management controls.

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<sup>2</sup> The exemptions from the Environmental Permitting (England and Wales) Regulations 2007 are under review. New regulations are expected to come into force in April 2010

Quality Protocol compliant anaerobic digestate should be stored in a clearly defined area separate to that used for feedstocks, material undergoing processing and other waste materials. It is the responsibility of the producer/ user of the material to ensure that they are compliant with the appropriate planning legislation for the storage of the material.

### **How we regulate anaerobic digestate that does not meet the requirements of the Quality Protocol**

If producers do not comply with the Quality Protocol **including** PAS 110, the material will normally be regarded as waste. If the anaerobic digestate remains waste, the following waste management controls continue to apply:

- it must be stored in accordance with an environmental permit or exemption from permitting;
- it must be transported by a registered waste carrier;
- it must be applied to land in accordance with either an environmental permit or an exemption from permitting under paragraph 7 or 9 of schedule 3 to the Environmental Permitting (England and Wales) Regulations 2007.

### **Manures and slurries processed via anaerobic digestion**

Agricultural manures and slurries are not considered waste if they are processed on their own via anaerobic digestion, and are used in the same manner that undigested manures and slurries are normally used, i.e. spread as a fertiliser on agricultural land. This is discussed further in the Anaerobic Digestion of Manure and Slurry Position Statement available on our [website](#).

### **Regulation of anaerobic digestion if operators registered with the appropriate certification scheme before 31 December 2009**

If you registered with an appropriate certification scheme (as defined in the Quality Protocol) by 31 December 2009, you can benefit from the following interim position provided:

- the business involves one of the final use of the digestate specified in the QP;
- digestate is not mixed with other wastes or materials;
- the activity is carried out in such a way that it does not, or is unlikely to cause pollution of the environment.

Our interim position is as follows:

- **Permitting** – If you already have a permit for the activity, you should continue to comply with its conditions. If the final use of the digestate would require a permit but you do not yet have one, we will not normally require you to have a permit.
- **Exemptions** – If you have already registered an exemption for the activity, you should continue to comply with its conditions. If the final use of the digestate would require an exemption and you do not yet have one, you should register the activity as exempt and comply with the conditions of that exemption.
- **Duty of care/ waste carrier registration** – These requirements will still apply as normal during the interim period.

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The above will apply until the time at which operators begin to comply with the Quality Protocol providing this is before 31 December 2010. After that date this interim position will be revoked.

## **Composting of digestate in line with the Compost QP**

Producers of anaerobic digestate may wish to compost digestate in line with the requirements of the Quality Protocol for the production of quality compost from source-segregated biodegradable waste (Compost QP). Compliance with the Compost QP **including** PAS 100 means that the composted digestate can be used without the need for waste management controls.

In summary, the following criteria must be met:

- the compost is produced using only the source-segregated input materials listed in the Compost QP;
- the compost meets the requirements of BSI PAS 100;
- the compost is destined for appropriate use in land restoration and soft landscape operations, horticulture (including domestic use), agriculture and soil-grown horticulture;
- the producer must obtain certification from the appropriate certification scheme;
- the producer must keep copies of contracts of supply or information to customers which includes a declaration of conformance with the Quality Protocol.

Full details of the requirements of the Compost QP are available from our [website](#). The [regulatory position statement](#) for the Compost QP contains information on what waste management obligations apply to companies who produce compost.

## **Enforcement**

If the activity is likely to cause pollution or harm to human health, or there is a breach of waste management controls, we will take action in line with our [enforcement and prosecution policy](#).

## **Further advice**

Detailed guidance on regulatory controls can be obtained from our National Customer Contract Centre on 08708 506 506, from our [website](#) or from the [NetRegs](#) website

This regulatory position statement will be reviewed by April 2010.

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## Annex 1 – Summary of conditions associated with exemptions and permits

Please refer to guidance available from our website to ensure you are aware of all the conditions.

Activity	Type of authorisation needed
<p>The anaerobic digestion of up to 1,000m<sup>3</sup> of biodegradable waste at any time:</p> <ul style="list-style-type: none"> <li>• at the place of production or</li> <li>• where the digestate is to be used, or</li> <li>• at any place occupied by the waste producer or person using the digestate</li> </ul> <p>The storage of waste which is to be digested at the place where it was produced or where it is to be digested</p>	<p>Exemption from permitting under paragraph 12 of schedule 3 of the Environmental Permitting Regulations</p> <p>If the activity is a directly associated activity in relation to Burning biogas as a fuel in any appliance with a rated thermal input of 3 megawatts or more, then it will have to be permitted with that activity<sup>3</sup></p>
<p>Storing non-liquid waste not at the site of production – up to 50 m<sup>3</sup> of waste can be stored in secure containers for a maximum period of 3 months.</p>	<p>Exemption from permitting under paragraph 50 of schedule 3 of the Environmental Permitting Regulations</p>
<p>Waste for the benefit of land - up to 250 tonnes/hectare/ year of digestate can be applied to agricultural land if it can be demonstrated that it will have an agricultural or ecological benefit and the area of land is 50 hectares or less.</p> <p>Associated storage of material is limited to a 12 month period.</p>	<p>Exemption from permitting under paragraph 7 of schedule 3 of the Environmental Permitting Regulations</p>
<p>Burning biogas in any appliance with a net rated thermal input of up to 0.4 megawatts</p>	<p>Exemption from permitting under paragraph 5 of schedule 3 of the Environmental Permitting Regulations</p>
<p>Burning biogas as a fuel in any appliance with a rated thermal input of 3 megawatts or more</p>	<p>Environmental Permit - Part A(1) (was PPC permit prior to April 2008)</p>
<p>Any other waste recovery activity not covered above, including burning biogas in any appliance with a net rated thermal input of between 0.4 and 3 megawatts</p>	<p>Environmental Permit - waste management operation (was WML prior to April 2008)</p>

<sup>3</sup> An activity is a directly associated activity if it has a technical connection with the other activity, is carried out on the same site as the other activity or if it could have an effect on pollution.