



**To:**

**Julie James MS, Minister for Climate Change**

**Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd**

9<sup>th</sup> March, 2023

Dear Ministers

You will no doubt be aware that in the past few years there have been some catastrophic pollutions of rivers across Wales and the UK caused by anaerobic digester (AD) plants.

AD is an industry that is growing, seen as both a source of green energy and a way of disposing of agricultural waste. It is also being presented as the 'silver bullet' to dealing with excessive manure and dirty water produced by intensive agriculture in catchments across Wales. However, Afonydd Cymru and Fish Legal have become increasingly concerned about an apparent lack of regulatory oversight of AD and the effect it is having on Wales's rivers currently and even more so in the future as the industry expands.

We have evidence of significant "gaps" in the planning process and in the permitting of plants by Natural Resources Wales (NRW). By way of a couple of examples, on the River Teifi there was a catastrophic failure at an AD plant and pollution incident in December 2016. Approximately 44,000 gallons of pollutant leaked into the Teifi from an AD plant near Tregaron, killing an estimated 18,000 fish on a five-mile stretch of river. Yet, some 6 years after the pollution incident the AD continues to operate without planning permission with the full knowledge of NRW and the local planning authority.

In the River Wye catchment, Fish Legal brought a legal challenge of a planning decision to allow the expansion of poultry production at a development near Builth Wells. The Court of Appeal acknowledged that the planning authority had made an error in law in not considering the spreading of digestate within the Wye catchment to be a material consideration. (*R (oao Fish Legal) v Powys County Council CA-2022-001694*). Despite this, the court concluded that the planners could rely on NRW to prevent pollution from digestate spreading.

In the most recent Core Management Plans published by Natural Resources Wales for the River Wye, however, it states that "other than 'cross compliance' the spreading of digestates is outside of regulatory control."

It has subsequently been confirmed that the AD plant in Talgarth (near Brecon) due to receive thousands of tonnes of manure and dirty water from the Builth development has consistently breached planning laws yet continues to operate despite the obvious pollution risks to the Wye SAC.

Just as concerning is evidence of diffuse pollution caused by digestate spreading on land that cannot absorb any more nutrients. NRW's own monitoring in the Wye catchment indicates there is a high

chance that digestate spreading is at least contributing to phosphorus target failure in some areas of the catchment, if not causing it.

In 2017, one sample from a stream in the river Usk catchment which flows through a digestate spreading area recorded a phosphorus reading over 100 times its target. The sample also recorded high BOD and ammonia values, which in NRW's own words, suggested "a significant pollution event." Even so, this appears not to have triggered an investigation at the time. The AD plant at the centre of the planning challenge outlined above spreads in areas of the Wye and Usk catchment where NRW recorded these very high P levels.

Tellingly, Herefordshire Council planners turned down a poultry unit application earlier in February on the grounds that the manure going to an AD plant did not offer certainty that when spread there would be no further deterioration in the SAC.

Afonydd Cymru and Fish Legal are not against anaerobic digestion in principle. But if Wales is to resolve the problems of high nutrient levels in our rivers (and achieve our biodiversity targets), the AD industry must not cause any pollution. Its effects must be properly assessed and it must be regulated effectively by NRW with proper and effective oversight by planning authorities.

We therefore ask that **Welsh Government carries out an urgent and full review of the regulatory and planning controls of ADs, from construction through to the spreading of digestate** to identify and address current gaps that pose a pollution risk to Welsh rivers.

We suggest that the review covers, but is not limited to, the following areas:

1. The planning process, both in terms of the installation of AD plants themselves and other developments that are approved on the grounds that their waste material will be disposed of via AD.
2. The permitting process, whether all AD plants are permitted that should be permitted, whether existing permits are adequate and whether all ADs should fall within NRW's regulatory regime as all pose a potential threat to the water environment.
3. All operators of AD plants being fully qualified to operate them.
4. Whether the growing of AD feedstock crops such as maize is still causing serious run-off problems through siltation and other chemicals and whether best practice is being followed.
5. Whether the time has come for compulsory testing of soil phosphorus levels for all landowners prior to the application of any form of organic manure.
6. The undertaking of an Appropriate Assessment for ADs that are sited and carry out spreading within SAC catchments to properly assess the effects on the protected sites (see addendum).

We would be grateful for a response at your earliest convenience.

Yours sincerely,

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