

This Report has been cleared for submission to the Board by Programme Manager, Marie O'Connor.

Signed:



Date: 12<sup>th</sup> November 2020



**OFFICE OF  
ENVIRONMENTAL  
SUSTAINABILITY**

**Environmental Licensing Programme Memorandum**

**To:** Director Dr Eimear Cotter

**From:** Inspector Áine Murphy

**Date:** 12 November 2020

**RE:** Request from Bio Agrigas Limited for an extension to the commencement period of Waste Licence Reg. No. W0285-01 in respect of a proposed anaerobic digestion facility.

**Background**

(i) Waste Licence

The waste licence was granted on 12/11/2015 to Bio Agrigas Limited for carrying out the following classes of activity, as specified in the Fourth Schedule of the Waste Management Act 1996 (WMA), as amended, at a facility located at Newdown, The Downs, Mullingar, Co. Westmeath:

- R3 Recycling /reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes), which includes gasification and pyrolysis using the components as chemicals.
- R12 Use of waste obtained from any of the operations numbered R1 to R 10.
- R13 Storage of waste pending any of the operations numbered R1 to R12 (excluding temporary storage (being preliminary storage according to the definition of "collection" in section 5(1)), pending collection, on the site where the waste is produced).

The proposed facility is authorised to accept 20,000 tonnes per annum of non-hazardous biodegradable waste (List of Waste codes: 02 01 02, 02 01 06 and 02 06 01) and feedstock (grass/maize silage and fodder beet). The waste activities authorised to take place at the facility include the anaerobic digestion of biodegradable waste and feedstock, and the operation of a combined heat and power plant.

In the Inspector's Report for this licence, dated 27/08/2015, an Environmental Impact Assessment (EIA) screening concluded that *"the Agency determined that the activities are likely to have a significant effect on the environment, and accordingly is carrying out an assessment for the purposes of Environmental Impact Assessment (EIA). An Environmental*

*Impact Statement (EIS) was submitted with the licence application and was considered by the Agency for the purposes of EIA. "The Agency subsequently carried out on EIA on the activity and the reasoned conclusion stated, "Having regard to the impacts (and interactions) identified, described and assessed above, I consider that the mitigation measures proposed will enable the activity to operate without causing environmental pollution." In addition, an Appropriate Assessment (AA) screening was carried out by the Agency and it was concluded that "an Appropriate Assessment of the proposed activity was not required."*

The licensed activity has not commenced.

(ii) Planning Permission

Bio Agrigas Limited applied to Westmeath County Council for planning permission for the construction and operation of a bio-energy facility on 25/05/2011 (planning reference no. 115055) and provided an EIS as part of the planning application. Westmeath County Council granted planning permission for the development on 26/03/2012 and also granted an extension of duration request up to 25/03/2018. The Agency understands the facility was not constructed within this period and the planning permission lapsed.

A new planning application for the construction and operation of a bio-energy facility was submitted to Westmeath County Council on 23/04/2020 (planning reference no. 206101) and an Environmental Impact Assessment Report (EIAR) accompanied this application. Notification of decision to grant planning permission was issued on 18/09/2020 and given there were no appeals received within the appropriate period, the planning permission was granted on 29/10/2020.

**Request**

On 28/10/2020, Bio Agrigas Limited submitted a request to extend the licence commencement date into 2021. The correspondence states *"The Anaerobic Digestion (AD) facility has not been constructed and Bio Agrigas Limited is applying to the EPA for an extension of the licence in order to commence construction and operation of the AD facility in 2021."* With respect to planning permission, the correspondence states *"Preliminary works were completed towards the end of 2019, however due to issues in relation to the planning permission for the facility these works were stopped. Following consultation with the Planning Section of Westmeath County Council a new planning application was lodged on 23rd April 2020. Construction of the facility would have commenced in 2019 had it not been for the issue with the planning permission."* The correspondence indicates that the new planning permission is *"for exactly the same facility as detailed in the original planning permission and W0285-01 waste Licence applications."*

**Assessment**

Given that the licence Reg. No. W0285-02, as issued, did not specify a commencement date (as provided for in section 49(2)(a) of the WMA), the commencement date for the licence is taken as three years after the licence grant date or as is appropriate in this case, the period referred in the extension provided by the Agency in 2018. As the licence was granted on 12/11/2015, the licence would have expired on 12/11/2018, in the normal course of events. In this case, Bio Agrigas Limited sought and were granted a two-year extension to the period of the licence by the Agency in 2018, until 12/11/2020 (as per section 49(1) of the WMA). The current request is the second extension request to the period of the licence.

Section 49(1) of the WMA outlines that where the activity to which a waste licence relates has not been substantially commenced within the period of three years beginning on the date on which the licence was granted, or the extension period granted, then that licence shall cease

to have effect on the expiry of the said period. If the period has not expired, the Agency can extend the period referred to in section 49(1) as may be appropriate. The licence will expire on 12/11/2020 if an extension period is not granted.

Westmeath County Council issued a consultation letter to the Agency on 01/05/2020 requesting observations on the planning application (reference no. 206101) and EIAR for the licensed waste facility W0285-01. The Agency has no record of receipt of this correspondence and the Planner's Report, dated 16/09/2020, recorded that no submission was received from the Agency in relation to this planning permission. This planning permission came to the attention of the Agency on the 28/10/2020 in correspondence received from the applicant in relation to this extension request.

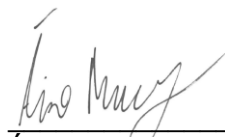
The Agency is of the view that a change to the planning status is a matter that could reasonably justify a review of the licence under the provisions of Section 46(1) of the WMA. In this case, it is considered that a licence review would be required to enable the Agency to take account of the planning application (reference no. 206101) and carry out an EIA and AA for the activity, as was completed during the assessment of the licence W0285-01. As part of the Agency's consideration of a licence review application, the Agency must ensure that before a revised licence is granted, a licence application is made subject to an EIA and AA as respects the matters that come within the functions of the Agency.

The Agency's Office of Environmental Enforcement were consulted in relation to this extension request.

### **Recommendation**

The Agency has a wide discretion when considering whether to extend the duration for the commencement of a licence. In this case, it is five years since the licence was granted; the planning permission under which the licence was granted expired in 2018; a new planning permission has been granted but not considered by the Agency; and the duration for the commencement of the licence has been extended once already. The Agency considers a licence review would be required to take account of the planning application (reference no. 206101) and to enable the Agency to carry out an EIA and AA for the activity.

Given an extension would not take into account any concerns in relation to the protection of the environment that might have arisen since the licence was granted, I recommend that the extension of duration request from Bio Agrigas Limited for Licence Reg. No. W0285-01 is refused.



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Aine Murphy  
Inspector

Date: 12 November 2020