

Closing Submissions - Ridgeway Users



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Glossary

BNG - Biodiversity Net Gain

CCS - Carbon Capture And Storage

CCF - Carbon Capture Facility

Cory - The Applicant

EA - Environment Agency

EfW - Energy From Waste

EN-1 - Overarching National Policy Statement for Energy

EQS - Environmental Quality Standard

ExA - Examining Authority

MoU - Memorandum of Understanding

PFAS - Per- and poly-fluoroalkyl substances

PFHxS - Per- and poly-fluoroalkyl substances (PFAS) which are included under Persistent Organic Pollutant (POP) regulation.

PFOAs - Per- and poly-fluoroalkyl substances (PFAS) which are included under Persistent Organic Pollutant (POP) regulation.

PFOS - Per- and poly-fluoroalkyl substances (PFAS) which are included under Persistent Organic Pollutant (POP) regulation.

PFCAs - Per- and poly-fluoroalkyl substances (PFAS) which are included under Persistent Organic Pollutant (POP) regulation.

POPs - Persistent Organic Pollutants

WFD - Water Framework Directive

WLC - Whole Life Carbon

Response To Rule 17 Letter

We note that whilst the majority of this representation will serve as our closing submissions, there are some outstanding issues and the ExA has indicated we can answer them, we shall include them here before the Summary.

Water Framework Directive Confusion

We note that The Environment Agency has replied to our Deadline 5 submission, but it appears they have not actually responded to the point we were making and we are confused as they are utilising language we have not used since our deadline 1 submission. We want to check that the nature of our complaint has been read and understood as after checking with the Hydrologist we consulted, it appears it has not.

The Hydrologist is pointing to the idea that other water courses should be subject to the WFD as well as just the main water body. Similarly, existing pollution must be taken into account in land management. The EA has still not actually replied to this.

Likewise, it is not the RCS limits we are worried about but the two samples with 20x and 10x the EQS of PFOS since our first sample that concern us.

Finally. Whilst dilution would occur from discharges, these are not the only source. Given that The Environment Agency has previously raised concerns about PAHs both on land and in the main water course emanating from flue emissions, it seems peculiar that PFAS has not been given the same consideration.

Policy Comments

We appreciate that the recently released *Planning for new energy infrastructure: 2025 revisions to National Policy Statements* document points to Carbon Capture being considered the only way to 'Deep Decarbonise' EfW. However, this does not change the fact that given the Waste Mitigation Hierarchy, reduction rather than capture still takes primacy.

Thus reduction of carbon-intensive substances such as plastics going to incinerators would still remain above CCS as a priority, and thus reduction of the use of carbon-intensive fuels such as plastics should be prioritised in tandem with any CCS.

A reduced emission profile would require a smaller facility and a smaller land-take, opening up alternative sites in the process. This has not been considered adequately.

Closing Submissions

Introduction

These final submissions are made on behalf of Ridgeway User: an interest group made up of local residents and users of The Ridgeway (a stretch of land adjacent to the Nature Reserve) and Crossness Nature Reserve Proper. We care deeply for the nature reserve, the area, its history and peoples.

Crossness Nature Reserve is part of Erith Marshes Site of Importance for Nature Conservation ("SINC"). It is also some of the last extant remains of what was once the largest Romani grazing Marshes in Europe. It consists of irreplaceable land and habitat that has been slowly eroded.

Ridgeway Users highlight the key points from their representations, which outline their final positions. Ridgeway Users key points are as follows:

1. Ridgeway Users found the presence of PFAS (Forever chemicals) in samples we took both on the nature reserve and within Cory (The Applicant's) rainwater discharge pipes. This points to the following key issues:
 - 1.1. A failure to include PFAS and inland watercourses within the WFD.
 - 1.2. The inadequate consideration of the use of PFAS within Carbon Capture and Storage
 - 1.3. An overreliance in the application on permitting regimes to control substances that are not actually within the permit
 - 1.4. The unsuitability of a nature reserve as a potential site due to the risk for unacceptable cumulative effects
 - 1.5. The inadequate consideration of alternatives
 - 1.6. Risks to the longevity of the CCF
2. That the Applicant has failed to adequately consider equalities issues surrounding Romani graziers and mitigate appropriately. These deficiencies in particular are:
 - 2.1. A lack of consideration of Romani Graziers' equalities issues
 - 2.2. Cumulative Effects & Poor Assessment
 - 2.3. Unacceptable handling of Romani Graziers' equalities issues - including misplaced documentation, citation of documents which do not appear to exist and a general lack of understanding of the nuances of the Romani community.
3. The Applicant will not achieve 95% carbon capture rates due to their increasing emissions and a poor past precedent for CCS. They have not followed the guidance and explained why they may not achieve 95%.
4. Poor engagement with Ridgeway Users

A Summary Of Ridgeway Users' Points

1. PFAS & Watercourse Pollution

Ridgeway Users conducted three tests for PFAS (forever chemicals) over the course of the examination at Deadlines 1, 3 and 6.

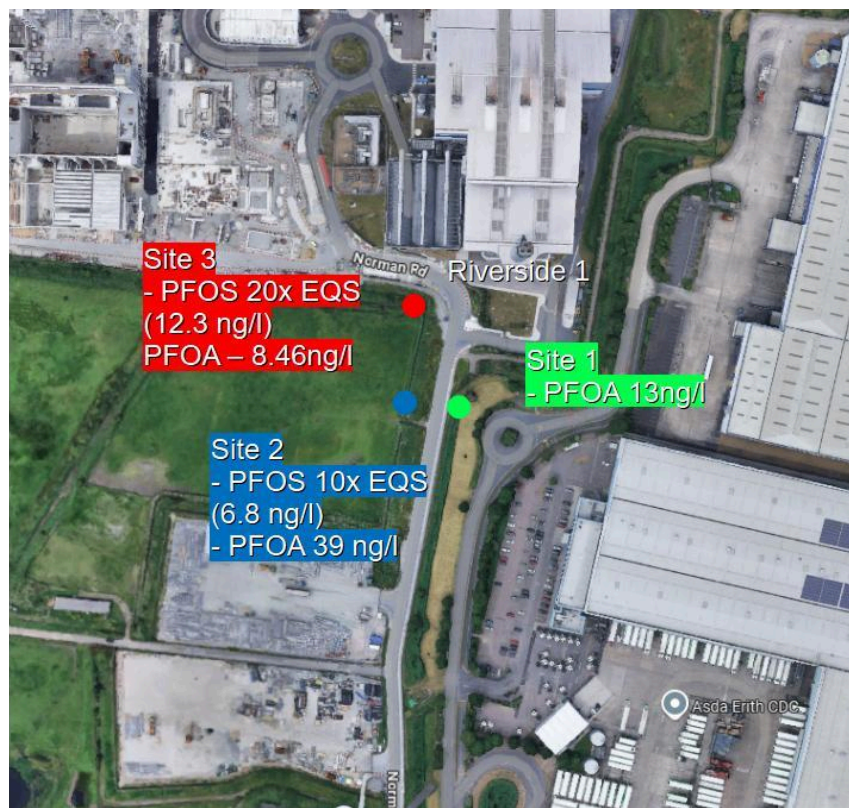


Figure 1

Green (Site 1) - East Norman Road Ditch - Deadline 1 Water Test - Non-Cory discharge ditch
Blue (Site 2) - West Norman Road Ditch - Deadline 3 Water Test - Cory discharge receptor
Red (Site 3) - Cory discharge pipe - Deadline 6 Leachate test

Our findings indicate that whilst there are some environmental baseline PFAS present (evidenced by our site 1 sample) due to pre-existing litter and industrial pollution, PFOS, a subset of PFAS which is banned in the UK under the Stockholm convention for persistent organic pollutants (POPs), with its own EQS, appears to at least be partially originating from the Applicant's discharge according to our test results.

Ridgeway Users have highlighted that there is precedent for this in deadlines 1 and 3. The emission of PFAS has been linked to Energy From Waste plants in other studies.^{1 2} There are a variety of mechanisms which have not been examined as a potential source.

Whilst our position has always been that further independent tests needed to be done to conclusively prove that the Applicant is responsible for these emissions, we note that the evidence indicates it is increasingly likely they are the source.

Promises of future testing are not adequate to relieve the Applicant of their obligations during the planning process to test and put this information up for examination by relevant parties. They have thus failed to meet the requirements for this application.

1.1 A Failure To Include PFAS Within The WFD

At deadline 5, Ridgeway Users consulted Hydrologist [REDACTED] who stated that not only should inland watercourses be included within the Water Framework Directive (which they are not currently), but that existing pollution by chemicals such as PFOS and PFOA, which are considered Persistent Organic Pollutants must be tackled in land management plans.

Ridgeway Users have noted that the consequences of a failure to do so could be severe. These include the Applicant stating in Outline Landscape Biodiversity, Access and Recreation Delivery Strategy Application Document Number: 7.9 that:

‘Water supplies are of good water quality, with low turbidity and no obvious signs of pollution; this requirement is expected to be met by existing supplies of water at the site.’

Ridgeway Users highlighted in deadline 6 that the Applicant plans to use existing water to partially flood Norman Road Fields to achieve biodiversity net gain. This is despite the Applicant accepting that PFAS is present in our sample (although incongruously not accepting it is in the land). These carcinogens could impact both wildlife and human visitors. Their measures are simply unsuitable in light of this information. They have not taken it into account.

Ridgeway Users remarked in deadline 3 that special protections apply under The Environment Act to Controlled waters including:

‘any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.’³

Crossness Nature Reserve falls under this category. Ridgeway Users have highlighted in deadlines 3, 4 and 5 that no such protections have been put in place to manage or prevent this harm. As potential Class A persons, Ridgeway Users believe that the Applicant is not a suitable steward of the nature reserve.

¹ Björklund, S., Weidemann, E., & Jansson, S. (2023). Emission of Per- and Polyfluoroalkyl Substances from a Waste-to-Energy Plant—Occurrence in Ashes, Treated Process Water, and First Observation in Flue Gas. *Environmental science & technology*, 57(27), 10089–10095.

² Meegoda, J. N., Bezerra de Souza, B., Casarini, M. M., & Kewalramani, J. A. (2022). *A Review of PFAS Destruction Technologies*. *International journal of environmental research and public health*, 19(24)

³ UK GOV. (2021). Part IIA of the Environmental Protection Act 1990. *Environmental Protection Act 1990*.

1.2 PFAS Within Carbon Capture and Storage

Ridgeway Users remarked in deadline 3 that - based on documents from IOGP⁴ (International Oil & Gas Producers) to the EU, asking for exemptions from PFAS legislation, specifically for Carbon Capture, we can assert that not only do other CCS users predict PFAS might constitute a highly probable environmental hazard (hence their asking for an exemption), but that PFAS will most likely be used in a huge number of parts in the process.

If they are a hazard, they need to be taken into account. Ridgeway Users have highlighted that this paired with existing PFAS pollution on the land has not been considered by the Applicant sufficiently in the planning process. These chemicals are carcinogens and could have potential health impacts, especially cumulatively.

1.3 An Overreliance On Permitting

Ridgeway Users have remarked in subsequent deadlines that the Applicant has stated without evidence such as in *THE APPLICANT'S RESPONSE TO INTERESTED PARTIES' DEADLINE 4 SUBMISSIONS*: 9.27 that there will be no resultant contamination from the scheme, claiming that the guidance states that permits will suffice at controlling these emissions.

We pointed out in particular at deadline 4 that the guidance only indicates that the Secretary of State must indeed consider that permitting regimes work as intended at controlling the substances they are listed to control. The idea that emission controls for other substances can prevent the emission of PFAS is not cogent.

PFAS however, are currently not included in the proposed permit and thus Ridgeway Users outlined in our Deadline 4 submission that there is no indication that there would be any incentive for the Applicant to reduce these risks, nor any controls in place to measure or assess them.

We also highlighted that it is up to the ExA and Secretary of State to make decisions regarding the protection of public interest, public health, safety and other decisions - including the attachment of conditions for mitigation and testing etc.

1.4 Cumulative Effects

Ridgeway Users have stated in deadline 4 that the risk of cumulative effects from PFAS currently on the land (and potentially emitted from the existing facilities), paired with the risk of PFAS from the Carbon Capture Facility is unacceptable.

We have argued that these potential emissions have not been considered when assessing site suitability.

⁴ IOGP. (2023). *IOGP Europe statement on the ECHA proposed PFAS restriction proposal related to the Carbon Capture, Transport and Storage (CCS)*. IOGP Europe. Retrieved November 25, 2024, from <https://iogpeurope.org/wp-content/uploads/2023/09/PFAS-regarding-CCS-paper.pdf>

1.5 The Inadequate Consideration of Alternatives

At deadline 3 (and subsequent deadlines), Ridgeway Users called on the Applicant to consider alternatives to just Carbon Capture and Storage.

The Stockholm Convention states that

Producers and holders of waste shall undertake all reasonable efforts to avoid, where feasible, contamination of this waste with substances listed in Annex IV.

We do not believe the Applicant is proposing to undertake all reasonable efforts to avoid where feasible this contamination from the proposed scheme. We highlighted that the Western Riverside Waste Authority's earlier remarks that the Applicant should have considered looking at sorting and processing the waste they receive would reduce CO₂ and any potential PFAS emissions. This would be preferable but has not been adequately explored. The land take would be smaller as well and thus not need to be on the nature reserve. It would open up new sites.

Whilst the new guidance states that deep decarbonisation requires CCS, Ridgeway Users have been keen to point out that reduction is at the very top of the Waste Hierarchy. Plastics contribute to around 65% of Cory's CO₂ emissions and thus reduction of this should always be looked at more preferably when assessing alternatives in tandem with CCS.

1.6 Risks To Plant Longevity

Across deadlines 3, 4, 5 and 6, we have called into question the effect of PFAS on plant longevity. Guidance states that the plant should have a lifespan of 25 years. New PFAS legislation is fast-moving into effect and lawsuits across Europe, the US and the UK are accumulating.

The Applicant's carbon capture facility once complete, will form one large contiguous facility - they will be fully integrated and the CCF will fail to work as intended if either of the two incinerators are disrupted - thus any risk to EfW longevity or operations should be considered shared under longevity considerations.

The pollution we have found is a potential risk to longevity and thus must be considered as such. Remediation scenarios and their disruption to function must be considered. So too must insurability in light of PFAS being found.

2. Romani Equalities Issues & Mitigation

This site is some of the last extant grazing marsh of what was once the largest Romani grazing marshes in Europe (deadline 3). This horse grazing has positive effects on marshland habitats. This also constitutes part of a traditional Romani lifestyle and is protected as such.

Ridgeway Users have argued that the Applicant's proposed land take largely takes away paddocks used by Romani graziers. No additional mitigation land has been provided for them and the proposed flooding of the land will reduce land area for grazing further (deadlines 4 and 5).

2.1 Failure To Meet Equalities Obligations

The Equalities Act section 149 states that new information, as and when it arrives, must be taken into consideration.

The Applicant asserts that such grazing is not part of a traditional way of life for Romani people. At deadline 4, we presented direct-to-camera evidence of the graziers discussing how such grazing and horse-keeping is in fact part of their traditional way of life.

The Applicant asserts in their most recent response to deadline 5 that this is not enough to convince them to change their stance. This is clearly not cogent. Ridgeway Users have shown this to be a clear demonstration that they are failing to be adequately flexible, as these obligations state.

2.2 Poor Assessment of Romani Effects

Part of Equalities obligations constitutes taking into account impact falling particularly on one community. The land take is largely paddocks used by Romani Graziers, yet the Applicant asserts that they are not unduly effected. At deadline 5, we highlighted that this is not a cogent take and is thus a failure of equalities obligations.

Similarly Ridgeway Users have explored across several representations the lack of examination of implications for the cumulative erosion of Romani land use over time in the area and the application's contribution to this, nor wider Romani civic ties to the land.

The Applicant has provided no new mitigation land for graziers, making them net losers of land.

2.3 Unacceptable Handling of Romani Issues

Ridgeway Users have also in previous representations, highlighted the poor way in which this issue has been handled by the Applicant.

We have seen the Applicant make the following blunders:

1. Claiming that a non-existent document demonstrates they have adequately shown the views of Romani Graziers against the scheme (to date no such documentation appears to have been provided to replace this).
2. Misplacing replies as a reason for not appropriately responding to representations.
3. Citing a document in an appendix as '*a sound framework for future management*' despite it containing racist language against Romani peoples.

Romani populations have been ruled by the EHRC as institutionally discriminated against by planners in this country. We do not believe the Applicant fully understands Romani communities and has certainly not implemented the special measures to help them get involved in the process. The lack of Romani engagement in the process is proof of this.

3. Failing to Achieve 95% Carbon Capture Rates

The guidance states that carbon capture rates of 95% must be achieved under normal operation, or documentation written as to why that is not the case.

At deadline 5, Ridgeway Users pointed to escalating emissions from Cory's Riverside 1. Emissions have risen around 10% in the last three years.

We know plastics are the largest single emissions culprit at the facility. The Applicant does not collect data on recycling being incinerated, but as we have pointed out in previous representations, the recycling capacity shortfall is growing, especially in London. More plastics are likely being incinerated.

If emissions rise as a result, we have argued that 95% will not be achieved, as it must be done under normal conditions. Similarly, Ridgeway Users argued at deadline 5 that their claims that permitting will suffice for control of this is only applicable if the permit asks for 95% - which it does not.

The question in the guidance is whether the design meets this criteria under normal operating conditions. They have not met this condition.

4. Poor Engagement With Ridgeway Users

At deadlines 5 and 6, we remarked that The Applicant does not list us as an interested party, refuses all requests for us to meet with them and deliver a statement of commonality and this is directly contrary to what the ExA has suggested should happen at several meetings.

Conclusion

For all the reasons outlined in Ridgeway User's previous representations, we believe as a primary position, the ExA should refuse the application for the DCO and compulsory purchase of part of the nature reserve.

As a secondary position, we believe the ExA, should they approve the DCO and compulsory purchase order, that

1. Additional mitigation land for Romani Graziers is provided
2. Controls for PFAS are placed within the environmental permit - both for flue emissions and discharges
3. Inland water courses are included in the Water Framework Directive
4. That the project can proceed without any need to acquire the Crossness Nature Reserve, as outlined by Save Crossness Nature Reserve
