

# CAMPAIGN FOR CLEAN AIR IN LONDON

*“The cross-party campaign to achieve urgently and sustainably at least World Health Organisation recommended standards of air quality throughout London”*

Campaign website: [www.cleanairinlondon.org](http://www.cleanairinlondon.org)

## Consultation responses required by 10 March 2009

The Rt. Hon. Hilary Benn MP  
Secretary of State for Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London SW1P 3JR

The Rt. Hon. Geoff Hoon MP  
Secretary of State for Transport  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

By email to: [euairquality@defra.gsi.gov.uk](mailto:euairquality@defra.gsi.gov.uk)

22 February 2009

Dear Secretaries of State (and Defra consultation team),

**Consultation on the draft UK notification to the European Commission to secure additional time to meet the limit values for particulate matter for certain zones/agglomerations in accordance with the Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe**

**UK fails to satisfy in London any of the three conditions for a time extension to comply with legal standards for dangerous airborne particles (PM<sub>10</sub>)**

**European Commission should ‘throw the rule book’ at the UK, and reject its application, unless the UK submits a wholly convincing plan to improve air quality in London**

**London needs one or more additional inner low emission zones implemented by early 2010 backed by a fully funded government ‘green deal’**

The purpose of this letter is to respond on behalf of the Campaign for Clean Air in London (CCAL) to the consultation (the Consultation) being carried out by the Department for Environment, Food and Rural Affairs (Defra) on the draft United Kingdom (UK) notification to the European Commission (the Commission) to secure additional time to meet the limit values for particulate matter (PM<sub>10</sub>) for certain zones/agglomerations in accordance with the Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the new AQ Directive). The consultation documents can be found at:

<http://www.defra.gov.uk/corporate/consult/air-quality/index.htm>

This letter is addressed jointly to the Secretary of State for Transport because CCAL understands that the Department for Transport (DfT) has joint responsibility with Defra for the UK meeting its legal obligations in respect of air quality.

The Prime Minister has been copied, given the cross-departmental issues raised, and all London’s MEPs and others have been copied given that the Commission has already started legal action against the UK for failing to notify a time extension by the deadline set by the Commission of 31 October 2008.

As you know, only the UK, Cyprus, Estonia, Portugal, Slovenia and Sweden out of some 24 countries have failed so far to submit any time extension notification plans to the Commission.

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## Summary

In CCAL’s carefully considered view, the UK does not satisfy either of the pre-conditions for it to obtain a time extension to comply with limit values for PM<sub>10</sub>.

In particular, the UK fails to pass either the **‘First condition’ – measures to achieve compliance by the initial attainment date**; or the **‘Specific condition for PM<sub>10</sub>’ – site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions**. Both of these pre-conditions must be met if the UK is to obtain a time extension to comply with limit values for PM<sub>10</sub>.

CCAL would need to be completely wrong on every point made in this letter in connection with the above pre-conditions if the UK is to be eligible for a time extension to comply with limit values for PM<sub>10</sub>. This seems highly unlikely given that the questions are ones of fact.

Furthermore the UK has made no reasonable effort yet to satisfy the **‘Second condition’ – measures to achieve compliance before the new deadline**. It has not been helped in this regard by: its reliance on measures that the Mayor of London says he plans to scrap or suspend; its vague words about committing to work with the Mayor of London; and/or its obvious non-compliance over at least part of the London road network even by 2011 (i.e. six kilometres or is it 12 kilometres with modeling errors?).

CCAL will therefore urge the Commission to ‘throw the rule book’ at the UK and reject its time extension notification (TEN) for failing to meet the conditions necessary for such a time extension unless the UK submits a wholly convincing and timely plan by the deadline set by the first written warning (i.e. Letter of Formal Notice). To be wholly convincing, such a plan must be backed by all necessary funding and immediate action to ensure that limit values for PM<sub>10</sub> will be complied with sustainably throughout London by no later than 11 June 2011.

CCAL will urge the Commission to progress vigorously legal action, in parallel with any consideration of a belated TEN from the UK, against the UK and the five other Member States that failed to submit a TEN by the Commission’s deadline of 31 October 2008. These countries are clearly in need of ‘encouragement’. Otherwise, what incentive would there be in future for any country to comply within the first six months of a deadline set by the Commission? CCAL understands that the fines against the UK could total £300 million just in respect of PM<sub>10</sub>. The Commission is not on some ‘frolic’: all the fault sits at the government’s feet after more than 10 years of inaction and disregard for deadlines and/or repeated warnings.

CCAL urges the government to learn now from its serious failings to comply with limit values for PM<sub>10</sub> – including the current difficulties it faces in applying for a time extension – and to propose and implement rapidly plans to comply fully with limit values for NO<sub>2</sub> by January 2010.

In CCAL’s carefully considered view, the UK is likely currently to miss - by a large margin - not just the limit values for NO<sub>2</sub> due to be met since 1999 by January 2010 but also the limit value plus margin of tolerance which must not be exceeded if the time extension provisions are to be used. CCAL considers currently therefore that the UK should not waste everyone’s time by submitting a TEN on NO<sub>2</sub> – it should

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instead focus all its energies on complying urgently with the limit values for NO<sub>2</sub> (as it will need to do when legal action is surely launched against it). The UK needs a convincing action plan for NO<sub>2</sub> now.

Finally, the UK seems to be one of the least compliant countries and worst ‘free-riders’ in the whole of Europe when it comes to complying with air pollution legislation. We need urgent and energetic cross-departmental action, lead personally by the Prime Minister, if sustainability issues are to be addressed holistically.

## **The UK breached legal standards for dangerous airborne particles in 2005, 2006, 2007 and 2008**

You will be aware that the UK breached the annual average and daily limit values for PM<sub>10</sub> in London in each of 2005, 2006 and 2007. A full list of the 34 zones and/or agglomerations where air quality laws were breached in the UK in these years can be found at:

[http://ec.europa.eu/environment/air/quality/legislation/pdf/pm10\\_exceedances\\_2005\\_07.pdf](http://ec.europa.eu/environment/air/quality/legislation/pdf/pm10_exceedances_2005_07.pdf)

The UK breached also air quality laws for PM<sub>10</sub> in 2008.

You will be well aware too that poor air quality has serious implications for public health. It results in between 12,000 and 24,000 premature deaths each year in the UK. Those with asthma, lung diseases and heart conditions are the most susceptible. These numbers compare with some 617 premature deaths per annum from workplace-related passive smoking before recent legislation came into force and up to 22,000 premature deaths per year from alcohol consumption. The excellent Rogers Review estimated that in 2005 the UK’s annual cost of health impacts from just one form of air pollution, PM<sub>10</sub>, was between £9.1 billion and £21 billion.

It is unacceptable that these health based standards are still far from being met.

## **European Commission has already started legal action against the UK for the above breaches**

The Commission started legal action against the UK on 29 January 2009 for breaching limit values for PM<sub>10</sub> in 2005, 2006 and 2007 when it sent the UK a Letter of Formal Notice (i.e. a first written warning). Please see the Commission’s press release:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/174&format=HTML&aged=0&language=EN&guiLanguage=en>

This action followed the failure by the UK to comply with the deadline set by the Commission on 8 July 2008 of 31 October 2008 to submit a notification for a time extension in respect of PM<sub>10</sub> (as the UK is allowed to do under Article 22 of the new AQ Directive). Please see the Commission’s press release:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1112&format=HTML&aged=0&language=EN&guiLanguage=en>

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CCAL understands that the UK now has until late March 2009 to reply to the Letter of Formal Notice after which time the Commission can send a Reasoned Opinion (i.e. a second and final written warning to the UK). For details of the legal process, please see:

[http://ec.europa.eu/community\\_law/infringements/infringements\\_en.htm](http://ec.europa.eu/community_law/infringements/infringements_en.htm)

Usually two months thereafter the Commission may ask the European Court of Justice (ECJ) for a judgment against the UK. If the UK fails to comply with the ECJ's judgment, the Commission may ask the ECJ to impose unlimited lump sum and daily fines on the UK.

CCAL understands that the fines against the UK could total £300 million just in respect of PM<sub>10</sub>. In seeking such fines, the Commission would not be on some cruel 'frolic': all the fault sits at the government's feet after more than 10 years of inaction and repeated disregard for deadlines and/or warnings.

## **Member States may seek an exemption from applying limit values for PM<sub>10</sub> until June 2011**

CCAL understands that the UK may notify the Commission when, in their opinion, the conditions are met in a given zone or agglomeration for postponing the attainment deadline for the limit values for NO<sub>2</sub> and benzene or for being exempt from the limit values for PM<sub>10</sub>.

To do so, the UK bears the burden of proving that:

- i. for NO<sub>2</sub> and benzene - **first condition** - the limit values cannot be achieved by 1 January 2010 (which will require the UK to show that efforts have been made to achieve compliance);
- ii. for PM<sub>10</sub>, that:
  - **first condition** - all appropriate measures have been taken at national, regional and local level to meet the deadline for the limit values i.e. 1 January 2005; and
  - **specific condition** - the limit values could not be achieved because of the presence of one or more of the following elements:
    - site-specific dispersion characteristics;
    - adverse climatic conditions; or
    - transboundary contributions;
- iii. for PM<sub>10</sub>, NO<sub>2</sub> and benzene, if the first condition (and specific condition for PM<sub>10</sub> notifications) is met – **second condition** – that:
  - compliance with the limit values will be achieved at the expiry of the postponement (for NO<sub>2</sub> and benzene) or exemption period (for PM<sub>10</sub>); and

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- the exceedances during the extension will remain below the limit values plus the maximum margin of tolerance provide for in Annex XI to the new AQ Directive.

In other words, for PM<sub>10</sub>, the UK may wish to seek an exemption for historic breaches of limit values in 2005, 2006 and 2007 and prospective breaches of limit values in 2008 (which are still to be reported upon), 2009 and 2010. CCAL understands that the UK plans currently to seek (in late 2009 or early 2010) a time extension to comply with the limit values for NO<sub>2</sub> until January 2015. Note that the Specific condition will not be applicable for NO<sub>2</sub> (or benzene).

If the Commission does not raise objections within nine months of receipt of an official and complete notification, the limit values for NO<sub>2</sub> and benzene are postponed from 1 January 2010 to January 2015 at the latest. For PM<sub>10</sub>, the exemption from the limit values will in that case apply for up to three years ending on 11 June 2011.

The legal basis for seeking such an exemption is set out principally in Article 22 of the new AQ Directive which can be seen at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

The Commission has provided guidance on the process for seeking a time extension principally in the form of a:

1. ‘Communication from the Commission on notifications of postponements of attainment deadlines and exemptions from the obligation to apply certain limit values pursuant to Article 22 of the new AQ Directive’ (the Communication):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0403:FIN:EN:PDF>

2. and a Staff Working Paper accompanying the above Communication:

[http://ec.europa.eu/environment/air/quality/legislation/pdf/sec\\_2008\\_2132\\_en.pdf](http://ec.europa.eu/environment/air/quality/legislation/pdf/sec_2008_2132_en.pdf)

## **The UK does not satisfy any of the three conditions for a time extension to comply with PM<sub>10</sub> laws**

In CCAL’s carefully considered view, the UK does not satisfy any of the three conditions for it to obtain an exemption from the limit values for PM<sub>10</sub> in London. As you know, each zone and pollutant will be assessed individually. Defra cites Marylebone Road as representing the worst air quality in London.

CCAL’s analysis of the three conditions follows below.

### **First condition – measures to achieve compliance by the initial attainment date**

To obtain an exemption for PM<sub>10</sub>, the UK must prove that it took appropriate action in the period preceding the date on which the limit values for PM<sub>10</sub> became mandatory. Only if it can be shown that

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efforts have been made to achieve compliance can the UK claim, in accordance with Article 22(1), that conformity with the limit values could not be achieved by the deadline. The UK fails to satisfy the First condition, inter alia, because:

- a. Table 5.14 on page 80 of Annex B shows that only four of the eight measures mentioned were started before January 2005. Indeed the others were started after 2005 (e.g. incentives for the early take up of Euro 5 vehicles only entered into force in January 2009 and the Taxi Emissions Programme started after 2005 and was fully implemented by July 2008 with no subsequent measures planned);
- b. the same Table 5.14 shows, worse still, that: two of the four measures that were adopted by the due deadline have no information available, even now (in 2009), on their impact on roadside concentrations; and the other two together reduced roadside concentrations by a total of only 2.5 µg/m<sup>3</sup>. It is clear therefore that a vague and inadequate effort was made to achieve the limit values before the initial attainment date;
- c. Annex XV on page 38 of the new AQ Directive lists the types of measures that should have been considered and used by the UK prior to 2005 to tackle compliance with limit values for PM<sub>10</sub>. See:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

Table 5.14 highlights by omission the UK's failure to adopt a number of these measures by the deadline of January 2005 such as reduction of emissions from vehicles through retrofitting with emission control equipment. Where is the UK's demonstration – as required by the new AQ Directive and paragraph 22 on page 6 of the Communication – that all appropriate measures were taken before January 2005 when key measures such as low emission zones and emission abatement schemes were late, half-hearted or non-existent?: and

- d. the Commission makes clear in paragraph 23 on page 6 of the Communication that, in its assessment it will also take into account the impact of correct transposition and implementation of the Directives included in Section 2 of Part B of Annex XV and of timely availability of the plan or programme in accordance with Article 8(3) of Council Directive 96/62/EC on ambient air quality assessment and management.

The UK admits in its draft submission (Form 8) that it has been subject to infringement action for Marine elements of Directive 2005/33/EC as regards the sulphur content of marine fuel. More significantly though, just two days after the UK launched this consultation saying - in Annex A Form 8 - that it was not subject to subject to infringement action on Directive 2006/32/EC on Energy Efficiency, the Commission sent a final written warning (i.e. Reasoned Opinion) to the UK for failing to implement that legislation properly. Please see:

[http://ec.europa.eu/community\\_law/eulaw/decisions/dec\\_09\\_01\\_29.htm](http://ec.europa.eu/community_law/eulaw/decisions/dec_09_01_29.htm)

Perhaps, most importantly though, the Commission should be checking whether the UK has transposed correctly the primary air quality legislation. In this regard, in just one example, it

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is clear that the UK has failed to transpose and/or implement correctly even the most fundamental details of the legislation. The UK defined a limit value in its Air Quality Standards Regulations 2003 and 2007 as a “concentration” when all the EU Directives have defined a limit value as “a concentration to be attained within a given period and not to be exceeded once attained”. This is an extraordinary failure by the UK.

See AQSR 2003:

<http://www.opsi.gov.uk/si/si2003/20032121.htm>

See AQSR 2007 (page 5):

[http://www.opsi.gov.uk/si/si2007/pdf/uksi\\_20070064\\_en.pdf](http://www.opsi.gov.uk/si/si2007/pdf/uksi_20070064_en.pdf)

See the new AQ Directive:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

We should not forget either that, on the same day Defra launched belatedly its consultation on PM<sub>10</sub>, the DfT launched a foreshortened and belated consultation to address its failings to implement properly important legislation designed to reduce sharply harmful emissions from vehicles. Please see:

<http://www.dft.gov.uk/consultations/open/devices/>

The DfT admitted this week that it has failed often to implement European Union legislation thereby highlighting a likely systemic failure across government. Please see:

<http://www.theyworkforyou.com/wrans/?id=2009-02-12b.255494.h&u=9844#c21700>

It is astonishing that the UK has failed to transpose or implement correctly crucial legislation that has, at its heart, a framework to protect public health.

*In conclusion, it is clear to CCAL that the UK did not adopt or implement adequately measures to reduce PM<sub>10</sub> levels in Greater London by the initial attainment date. Therefore, the UK does not satisfy the first condition necessary for a time extension.*

**Specific condition for PM<sub>10</sub> – site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions**

To obtain an exemption for PM<sub>10</sub>, the UK must prove that the limit values could not be achieved because of one or more of the following elements:

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## Site-specific dispersion characteristics

This exemption is designed to allow exemptions only for so called ‘street canyons’ where pollution may be ‘trapped’ and hard to disperse because of exceptional local conditions (e.g. poor urban planning). The UK fails to satisfy the Specific condition, inter alia, because:

- a. the government admits (rightly) in paragraph 230 on page 77 of Annex B that the Marylebone Road site does not meet the definition used by the Commission for street canyons (see paragraph 29 on page 8 of the Communication);
- b. furthermore, even if it did (which it does not), paragraph 28 on page 7 of the Communication makes clear that “*Site-specific dispersion criteria may be claimed only where it can be demonstrated that the exceedances occurs locally in such specific area and not elsewhere, such as urban background or along less densely built up streets in the same air quality zone or agglomeration*”. That is clearly not the case since, for example, the Cromwell Road monitoring station operates in less densely built up streets (it is in the garden of a museum) and showed 39 exceedances in 2005. Please see:

[http://www.londonair.org.uk/london/asp/publicstats.asp?statyear=2005&mapview=all&region=0&site=KC2&postcode=&la\\_id=&objective=All](http://www.londonair.org.uk/london/asp/publicstats.asp?statyear=2005&mapview=all&region=0&site=KC2&postcode=&la_id=&objective=All)

- c. Figure 66 at the top of page 95 of the London Atmospheric Emissions Inventory 2004 (LAEI 2004) shows in a ‘Transect of London’ that many roads across London breach the limit values for PM<sub>10</sub>. Please see:

[http://www.london.gov.uk/mayor/environment/air\\_quality/docs/laei-2004-full-report-dec08.pdf](http://www.london.gov.uk/mayor/environment/air_quality/docs/laei-2004-full-report-dec08.pdf) (Note: 6MB file size)

CCAL has submitted a Freedom of Information/Environmental Information Request to the Greater London Authority seeking further information about the Marylebone Road site and other sites in London.

Even Defra admits (rightly) that strict site-specific conditions do not apply at the Marylebone Road site. It is clear to CCAL that, even if they did (and they do not), the UK could not justify a time extension because similar problems exist also along less densely built up streets and/or in the urban background.

## Adverse climatic conditions

CCAL notes and agrees with Defra that the UK cannot consider adverse climatic conditions to have caused the breaches of limit values for PM<sub>10</sub> in London in 2005.

## Transboundary contributions

This exemption is designed to allow time extensions only where air pollution generated in another country is a major cause of breaches of standards elsewhere. It is designed for countries such as The

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Netherlands and Belgium which experience significant problems from French and German air pollution drifting across their borders.

It is implausible that London’s air pollution problems are caused in large part by continental European air pollution drifting across the Channel against the prevailing winds. Not surprisingly, Defra’s work makes clear that the facts do not support a case for using this exemption. In particular, the UK fails to satisfy the Specific condition, inter alia, because:

- a. the UK admits in Table 5.13 on page 79 of Annex B that the Transboundary contribution to exceedances of the daily limit value in Greater London in 2005 was not the cause of non-compliance;
- b. CCAL cannot understand how the UK government considers that Transboundary contributions could possibly be the source of nearly half of the exceedances monitored at the Marylebone Road site. The much more authoritative LAEI 2004 Report states on page 10 that road transport is responsible for 71%, 70% and 64% of the total PM<sub>10</sub> emissions in 2003, 2004 and 2010 respectively across the whole of the Greater London area (with cars and light goods vehicles alone responsible for 60% and 21% respectively of emissions from all vehicles in 2010). With respect, it seems likely that local concentrations of PM<sub>10</sub> in Marylebone Road will reflect a much higher than city-wide average of road transport emissions i.e. well over 70% in 2005. Please see:

[http://www.london.gov.uk/mayor/environment/air\\_quality/docs/laei-2004-full-report-dec08.pdf](http://www.london.gov.uk/mayor/environment/air_quality/docs/laei-2004-full-report-dec08.pdf) (Note: 6MB file size)

CCAL urges the government to check its facts thoroughly against the authoritative work done for, and showed in, the LAEI 2004 Report (and/or subsequently) and/or by the excellent Kings College London air quality team; and

- c. furthermore, even if Transboundary contributions were the cause of breaches of limit values in Marylebone Road (and they were not), paragraph 40 on page 9 of the Communication makes clear that *“Member States claiming a transboundary contribution must indicate whether consultations have been held with the Member State in which the pollution originates, in accordance with Article 8(6) of Directive 96/62/EC (Article 25 of the new AQ Directive). If no such consultations have taken place, despite the origin of the pollution being known, the Member State concerned may be considered not to have taken all appropriate measures to meet the original deadline”*. CCAL has found no evidence in the consultation documents that the UK has complied with this condition partially or fully.

CCAL has asked Defra separately for evidence that such consultations took place.

***In conclusion, it is clear to CCAL that none of site-specific dispersion, adverse climatic conditions or transboundary contributions were responsible individually or in any combination for the UK failing to achieve compliance with the limit values for PM<sub>10</sub> in Greater London by the initial attainment date. Therefore, the UK does not satisfy the Specific condition for a time extension for London.***

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## **Second condition – measures to achieve compliance before the new deadline**

Even if the **first condition** and the **specific condition** were met by the UK for PM<sub>10</sub> in London (which CCAL does not consider is the case), the UK must prove that it will achieve compliance with the limit values before the new deadline.

The UK must also prove that the exceedances during the time extension period will remain below the limit values plus the maximum margin of tolerance provided for in Annex XI to the new AQ Directive. In CCAL’s views, Defra’s current such plans make no effort to address this problem.

The UK fails to satisfy the Second condition, inter alia, because:

- a. Defra admits in paragraph 236 on page 80 of Annex B (i.e. Annex B – Technical report to accompany UK PM<sub>10</sub> Time Extension Notification forms) that ‘The baseline projection for Greater London shows that the daily limit value is not projected to be met in 2011. Sensitivity analysis reduced the total road length exceeding to around 6 [kilometres] which is well within the uncertainties of the model’;
- b. Defra says the UK is depending for compliance on the Mayor of London delivering improvements through the London Congestion Charge when Mayor Johnson said on 27 November 2008 he proposes to scrap the western extension of the London Congestion Charging Zone. Please see:

[http://www.london.gov.uk/view\\_press\\_release.jsp?releaseid=19898](http://www.london.gov.uk/view_press_release.jsp?releaseid=19898)

- c. Defra says the UK is depending for compliance on the Mayor of London on improvements through the London Low Emission Zone (LEZ) when Mayor Johnson announced on 2 February 2009 – just six days after Defra launched this consultation and four days after the Commission started legal action against the UK - that he proposes to scrap Phase 3 of the London LEZ. Note also that ‘soft’ enforcement means that the existing LEZ may not have shown yet its full benefit to public health. Please see:

[http://www.london.gov.uk/view\\_press\\_release.jsp?releaseid=20757](http://www.london.gov.uk/view_press_release.jsp?releaseid=20757)

- d. Defra puts much store in paragraph 3.7 on page 8 of the main consultation document that ‘The UK Government and the Mayor of London have committed to working together to identify further measures, to ensure the UK will meet the limit value for PM<sub>10</sub> in London in 2011. These measures could include national, London and local measures as necessary’. In CCAL’s view, past experience suggests this is a hollow promise when lives are being lost now. Even if this promise were to be delivered upon, at some unspecified date in the future, it does not meet the condition required for a time extension i.e. that the UK shows how limit values will be complied with by the deadline of 11 June 2011; and
- e. Defra has shown no measures that will ensure that exceedances will remain below the limit values plus maximum margin of tolerance. Indeed, already in 2009, in the six weeks up to mid-February, the level of PM<sub>10</sub> at the Marylebone Road monitoring site averaged 49

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micrograms per cubic metre ( $\mu\text{g}/\text{m}^3$ ) i.e. it exceeded the rate for the limit value plus maximum margin of tolerance of  $48 \mu\text{g}/\text{m}^3$ . Please see the current readings:

[http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&site=MY1&bulletin=hourly&la\\_id=&statyear=2009&postcode=](http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&site=MY1&bulletin=hourly&la_id=&statyear=2009&postcode=)

- f. finally, please note that, despite warm words in the consultation document about existing measures being likely to deliver compliance with the limit values, there is evidence that air pollution has started in 2009 at higher levels in some parts of London that in the same period in 2008. For example, please check monitoring sites in Brompton Road and Kings Road.

***In conclusion, it is clear to CCAL that the UK is still far from showing: how it will achieve compliance with the limit values for  $\text{PM}_{10}$  in London before the new deadline; or that exceedances will remain below the limit value(s) plus maximum margin of tolerance if the time extension provisions are used.***

## **Others comments**

CCAL has the following further comments on the consultation:

- a. there was no excuse for the UK missing the deadline set by the Commission of 31 October 2008 to submit a TEN. CCAL explained in detail on page 8 of a letter to Commissioner Dimas dated 1 November 2008 why the UK should have met this (very reasonable) deadline. In particular, please note that Regulations 8 and 28 of the AQSR 2007 make clear that ‘Improvement plans’ need only be consulted upon when they relate to benzene,  $\text{NO}_2$  and ozone. There is no legal requirement for the UK to hold the current consultation on  $\text{PM}_{10}$  and – even if there is (are there is not) – the UK has held similar such consultations in the past well before the end of the calendar year instead of well after it. The proposed date of June 2009 for submitting a TEN to the Commission is unnecessarily late and seems designed cynically to coincide with elections for the European Parliament;
- b. CCAL understands that the UK has no plans to submit a TEN request in respect of Gibraltar and instead expects Gibraltar to submit its own request. Please will you clarify the government’s stance on Gibraltar in the (eventual) TEN including timescales and responsibilities? CCAL notes that the UK will remain fully exposed to legal action – from the Commission and others - for breaches of limit values for  $\text{PM}_{10}$  in Gibraltar in respect of 2006 and 2007 (and future years when breaches arise) unless a time extension is obtained;
- c. CCAL notes that Glasgow also seems to fail to satisfy the conditions for a time extension for  $\text{PM}_{10}$  (see page 108 Annex B); and
- d. CCAL finds inexplicable Defra’s cost-benefit analysis in the ‘Summary: Intervention & Options’ paper. First, the report should be about cost-effective compliance with health based legal deadlines not weighing up the likely costs of legal action for breaching those laws. Second, it is ridiculous to weigh the costs of a national scheme for the abatement of

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particulate matter against the need to adopt additional measures to improve air quality in London only.

<http://www.defra.gov.uk/corporate/consult/air-quality/annexc-consultation-impactassessment.pdf>

Such analysis is anyway irrelevant and 10 years too late since the UK either did or should have done such analysis before signing up to the legal framework for air quality laws in 1999.

CCAL was pleased to see however that the Ministerial sign-off includes, for the first time, a consideration of the ‘impact of the leading options’ instead of just costs and benefits when legal deadlines must be met to comply with air pollution standards. Please will the government change the statement to read – when environmental deadlines must be met – to “I have read the Impact Assessment and I am satisfied that it represents the correct view of the most cost effective and practical means of complying with the UK’s environmental obligations”.

Please note that CCAL is responding to the consultation, in general and subject to the above exceptions, only as it relates to London.

## **Requirement to comply with limit values for NO<sub>2</sub> by 1 January 2010**

CCAL urges the government to take the necessary action to comply with the limit values for NO<sub>2</sub> by 1 January 2010 (and in any event to meet the strict legal conditions that would be necessary for a time extension). The UK’s lack of action in respect of NO<sub>2</sub> has been so gargantuan that: over 100 UK cities breached in 2008 what will be the legally binding limit value for average annual NO<sub>2</sub> from January 2010; and even the government’s own projections show widespread breaches of the limit value plus margin of tolerance for NO<sub>2</sub> in London in 2010 and 2015 (and no doubt between those dates). The limit value for peak exceedances for NO<sub>2</sub> was breached before mid-January in 2009 i.e. within two weeks not 12 months. Please see the UK’s inadequate submission to the Commission on its plans and programmes to comply with the limit values for NO<sub>2</sub>:

<http://cdr.eionet.europa.eu/gb/eu/aqpp/envsutvxa>

Please take urgent action to remedy this wholly unacceptable situation and comply fully with the UK’s legal obligations in respect of limit values for NO<sub>2</sub>.

## **Consequences and next steps**

In CCAL’s carefully considered view, the following actions are required now:

- i. the Commission should ‘throw the rule book’ at the UK (i.e. follow, to the letter, the requirements for assessing a time extension on PM<sub>10</sub>) and reject the UK’s TEN application unless the UK submits a wholly convincing and timely plan by the deadline set by the first written warning (i.e. Letter of Formal Notice) - backed by all necessary funding and immediate action - to ensure that limit values for PM<sub>10</sub> will be complied with sustainably throughout London by no later than June 2011. Not least, by rejecting the UK’s application

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- and confirming that the UK does not meet either or both of the pre-conditions for a time-extension for PM<sub>10</sub> in London, the Commission would, in effect, be (rightly) standing back and allowing UK citizens to start their own legal action against the government for breaching limit values for PM<sub>10</sub> in 2005 and/or any year since; and/or
- ii. the Commission should progress full legal action, in parallel with any consideration of a belated TEN from the UK, against the UK and the five other Member States that failed to submit any part of a TEN by the deadline of 31 October 2008. It is clear that these countries must be ‘encouraged’ if a level playing field is to be established across Europe. It would be completely wrong to drop, or put on hold, legal action against these six Member States just because they respond now (if they do) to the current written warning (when an earlier one was sent in June 2008). What incentive would there be in future to comply with initial deadlines?: and/or
  - iii. CCAL does not understand why the Commission has sent now a Letter of Formal Notice to the UK (after the warning sent on 30 June 2008) when it could have chosen to proceed against the UK, as soon as it missed the deadline of 31 October 2008, to the third stage of the legal process i.e. to seek an immediate judgment by the ECJ. CCAL will urge the Commission therefore to go immediately to the ECJ, rather than issuing a final written warning with a further two month delay, if the UK fails to submit a wholly convincing plan to the Commission by the end of March 2009; and/or
  - iv. thereafter, if the UK fails to respond appropriately and urgently to an ECJ judgment, the Commission should press for unlimited lump sum and daily fines against the UK. CCAL understands that these fines could reach or exceed some £300 million.

## **The London Proposal**

With speculation that relations are breaking down between the (Labour) government and the (Conservative) Mayor of London, CCAL urges both parties to seek common ground and protect the public health of Londoners.

CCAL considers that several areas must be addressed fully if the UK’s proposal to the Commission, to ensure the limit values for PM<sub>10</sub> are to be achieved in London by 11 June 2011, is to be credible. The government must commit to a ‘green deal’ that provides all necessary funding and administrative and other support necessary for the Mayor of London to tackle the most polluted parts of London at a minimum by:

- i. launching urgently a major programme to improve public understanding of air quality issues which may trigger large scale behavioural change (e.g. all advertising for vehicles in London should show levels of particulate matter and oxides of nitrogen as well as carbon dioxide – to demonstrate clearly the perils of diesel emissions in cities);
- ii. introducing, by early 2010, one or more additional inner low emission zones to match at least the Euro 4/IV standard for diesel emissions for particulate matter and oxides of nitrogen

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(which may need to extend to the north, south, east and west of the current Central and Western Congestion Charging zones);

- iii. ensuring black taxis (and public hire vehicles) meet at least Euro 4 engine emission standards for particulate matter and oxides of nitrogen by late 2010. Has anyone asked the Public Carriage Office what measures it would recommend if it is to play the fullest part possible in ensuring that limit values are achieved in the most cost effective manner by 2011?;
- iv. ensuring London’s bus fleet meets at least Euro 4/IV engine emission standards for particulate matter and oxides of nitrogen (e.g. by adopting selective catalytic reduction (SCR) or SCRT equipment (i.e. to treat particulate matter as well as oxides of nitrogen)) by 2011. Has anyone asked Transport for London’s bus team what measures it would recommend if it is to play the fullest part possible in ensuring that limit values are achieved in the most cost effective manner by 2011?;
- v. ensuring that limit values for PM<sub>10</sub> (and NO<sub>2</sub>) will be achieved sustainably along the whole length of the Olympic Route Network well ahead of London 2012; and
- vi. implementing urgently a comprehensive package of measures to tackle emissions from a wide range of other sources e.g. demolition and construction; incinerators and other regulated sources; and gas boilers.

Other measures may be needed but they must be timely and shown to be effective. It is essential that PM<sub>10</sub> and NO<sub>2</sub> are addressed holistically if cost savings are to be achieved.

Please work together to deliver urgently the above measures to protect the health of Londoners.

## **Reply to consultation question**

In CCAL’s carefully considered view, in response to the Consultation question in paragraph 3.11 on page 8 of the Consultation document:

“CCAL considers that the draft notification to the European Commission (Annexes A and B) and/or the draft Impact Assessment (Annex C) does not present an accurate and/or complete case for postponement of the attainment deadline for PM<sub>10</sub> until 2011 for Greater London for the reasons set out in detail in this letter. CCAL is not commenting on other zones or agglomerations except as set out in this letter.”

For the avoidance of doubt, CCAL reserves all its legal rights to take action on the matters raised in this letter and otherwise.

Please respond to this letter by addressing fully the points made in an urgent UK submission to the Commission and by taking decisive action now to comply with limit values for NO<sub>2</sub> and PM<sub>10</sub>.

Thank you and your many colleagues for all that you do to improve air quality in London.

Please confirm receipt of this letter to the electronic email address provided separately.

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With best wishes.

Yours sincerely  
Simon Birkett  
Principal Contact  
Campaign for Clean Air in London

cc: By hand:  
Winston Fletcher, Chair, The Knightsbridge Association  
Carol Seymour-Newton, Honorary Secretary, The Knightsbridge Association

The Rt. Hon. Gordon Brown MP, The Prime Minister  
Commissioner Dimas, Environment DG  
The Rt. Hon. Geoff Hoon MP, Secretary of State for Transport  
The Rt. Hon. Ed Miliband, Secretary of State for Energy and Climate Change  
The Lord Hunt of Kings Heath, Minister for Air Quality  
Boris Johnson, Mayor of London

## **ORGANISATIONS**

Helen Ainsworth, EU and International Air Quality, Defra  
Jenny Bates, London Regional Campaigns Co-ordinator, Friends of the Earth  
Patricia Brown, Chief Executive, Central London Partnership  
Tim Hockney, Executive Director, London First  
Peter Daw, Interim Strategy Manager (Air Quality, Energy and Climate Change), GLA  
Dame Judith Mayhew, Chair, New West End Company  
Daniel Moylan, Deputy Chair, Transport for London  
Philip Mulligan, Chief Executive, Environmental Protection UK  
Derek Picot, Chairman, The Knightsbridge Business Group  
Dragomira Raeva, EU Policy Unit, European Environmental Bureau  
Dr Martin Williams, Senior Reporting Officer, Atmospheric Quality and Industrial Pollution, Defra  
Tim Williamson, Deputy Senior Reporting Officer, Defra

## **LEADING POLITICIANS**

John Bowis MEP, Conservative  
Jean Lambert MEP, Green  
Baroness Ludford MEP, Liberal Democrat  
Claude Moraes MEP, Labour  
Gareth Bacon AM, Conservative, London Assembly Member  
Darren Johnson AM, Green, Chair of the Environment Committee, London Assembly  
Caroline Pidgeon AM, Liberal Democrat, Deputy Chair of the Transport Committee  
Murad Qureshi AM, Deputy Chair, Environment Committee, London Assembly  
Valerie Shawcross AM, Chair of the Transport Committee, London Assembly  
Councillor Colin Barrow, Leader of the Council, City of Westminster  
Councillor Danny Chalkley, Cabinet Member for Transport and Environment, City of Westminster  
Councillor Merrick Cockell, Leader of Kensington and Chelsea Council