



CLIENTEARTH
JUSTICE FOR THE PLANET

3 Chapel Place
London
EC2A 3DQ
t +44 (0)20 7749 5970
fx +44 (0)20 7729 4568
w clientearth.org

Brussels Office
Bd. Emile Jacqmain 90
Bruxelles 1000
t +32 (0)2 340 09 66

Commissioner Dimas
European Commissioner for the Environment
Environment Directorate-General
200, Rue de la Roi
(BERL 11/112)
1049 - Brussels
Belgium

27th July 2009

Dear Commissioner Dimas

Time Extension Notification to apply PM₁₀ limit values in Greater London

Executive Summary

- The UK has submitted a request to the European Commission (Commission) to obtain a time extension for compliance with EU limit values for dangerous airborne particles (PM₁₀). The request relates to a number of zones in the UK, including Greater London.
- ClientEarth urges the Commission to reject this request in relation to Greater London as it does not satisfy any of the three legal requirements for obtaining a time extension under the relevant EU Directive. If the Commission fails to reject the request for a time extension, this will be in contravention of the Directive and vulnerable to legal challenge.
- As soon as the request for a time extension is rejected, the Commission should escalate the existing infringement action against the UK for non-compliance with the limit values for PM₁₀, forcing immediate compliance.
- In any event, whether compliance with the limit values is to be immediate or delayed, the Commission should continue to press the UK Government to submit a credible plan which demonstrates how it will ensure sustainable compliance with PM₁₀ limit values throughout Greater London by June 2011.
- ClientEarth acknowledges the commitment that the Commission has shown to enforcing European air quality legislation and urges it to continue to take firm action to safeguard the health of Europe's citizens.

Introduction

I am writing on behalf of ClientEarth with regard to the UK Government's recent notification to the European Commission to extend the deadline for compliance with the limit values set for dangerous airborne particles ("PM₁₀") by Directive 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe (the "Directive") in relation to the Greater London area.

The purpose of this letter is to demonstrate that the application for a Time Extension Notification ("TEN") in relation to the Greater London Urban Area does not comply with the conditions for an exemption under Article 22 of the Directive. The Commission has powers under the Directive to raise objections to the TEN within nine months of receiving it. If no objections are raised in that time, the deadline for compliance with the PM₁₀ limit values will be extended to 11 June 2011. The Commission should therefore reject the UK's TEN in relation to Greater London before the expiry of the nine month time limit.

By issuing a letter of formal notice against the UK Government in January 2009 for its failure to submit a TEN by the required deadline, the Commission delivered a welcome demonstration of its commitment to taking firm action against Member States that do not comply with air quality legislation. Similarly, we welcomed the Commission's recent decision to reject time extension requests in relation to 75 zones in nine different Member States. We urge the Commission to maintain this firm stance in its consideration of the substance of the UK's TEN.

If the TEN is rejected in relation to Greater London, we would expect the Commission to escalate the infringement proceedings against the UK Government which it initiated by issuing the letter of formal notice in January. If the Commission does not reject the TEN, ClientEarth will consider bringing a legal challenge against this decision at either or both the EU and UK level.

In any event, ClientEarth encourages the Commission to press the UK to submit a credible air quality plan for Greater London. Although the UK is ineligible for a time extension, a credible plan would reduce the need for the Commission to pursue infringement proceedings against the UK and may eliminate the need for ClientEarth to take legal action in connection with the TEN. Such a plan must clearly demonstrate binding commitments to a range of ambitious measures which will ensure sustainable compliance with PM₁₀ limit values throughout Greater London by, at the latest, 11 June 2011 (which would be the extended deadline if the TEN was not rejected).

ClientEarth is a non-profit law group working for the benefit of civil society and the environment in the European Union. ClientEarth has today launched "CleanAir for London" - a campaign to ensure that London is fully compliant with all relevant air quality laws in time for the 2012 Olympic Games. In addition to raising public awareness and galvanising cross-party political support, ClientEarth will be taking all practical legal action at the national and European level to ensure that this goal is achieved. This letter is the first step in that process.

Air quality in London

The Directive imposes both daily and yearly limit values for concentrations of PM₁₀. The daily limit value requires that PM₁₀ concentrations must not exceed 50 micrograms per cubic metre on more than 35 days in a calendar year. The yearly limit requires that over a calendar year, average PM₁₀

concentrations must not exceed 40 micrograms per cubic metre. The Directive requires that limit values must be attained within a given period, and are not to be exceeded once attained.

The limit values for PM₁₀ became legally binding in 2005 as a result of an earlier directive.¹ Since then the annual average and daily limit values in London have been breached in 2005, 2006 and 2007. The TEN is therefore seeking an exemption for both historic breaches, i.e. those which occurred in 2005, 2006 and 2007, and anticipated breaches for 2008 (which are still to be reported on), 2009 and 2010.

The health impacts of PM₁₀ pollution

It is essential that concentrations of PM₁₀ in the London area are brought within the limit values set by the Directive because of the serious damage that PM₁₀ causes to human health.

- In parts of London, PM₁₀ pollution is the worst in the UK and among the worst in Europe.
- A recent study by the European Environment Agency suggests that PM₁₀ could have contributed to approximately 3,000 premature deaths in London in 2005 alone². People who die prematurely as a result of such pollution may do so on average ten years early.³
- Air quality failures in the capital are part of a wider national problem, with an estimated healthcare cost of up to £21 billion each year.⁴
- PM₁₀ pollution has been proven to cause heart and lung disease and other problems, with the elderly and the young being particularly vulnerable.
- Studies have shown that those who live near busy roads, and children who attend school close to busy roads, suffer from increased incidences of respiratory illness.

¹ Directive 1999/30/EC of the European Parliament and of the Council of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matters and lead in ambient air.

² EEA, Technical Report *Spatial assessment of PM₁₀ and ozone concentrations in Europe* (2005), page 20. <http://www.eea.europa.eu/publications/spatial-assessment-of-pm10-and-ozone-concentrations-in-europe-2005-1>

The EEA report estimated the incidence of premature deaths caused by PM₁₀ exposure at 650 per 1 million people. Based on the proportion of 4,469,400 people aged over 30 in Greater London in 2007 this would equate to 2,905 deaths from PM₁₀. This figure assumes that Londoners are exposed to no more than UK national average levels of air pollution.

³ Kunzli N, Kaiser R, Medina S, et al. Public Health impact of outdoor and traffic-related pollution: A European assessment. *Lancet* 2000; 356: 795-801.

⁴ Defra, Policy Guidance (PG09) *Local Air Quality Management* (February 2009), page 7. <http://www.defra.gov.uk/environment/airquality/local/guidance/pdf/laqm-policy-guidance-part4.pdf>

London's continued non-compliance with the Directive poses an unacceptable risk to the health of its citizens and therefore the Commission must act in order to protect their interests.

Extending the deadline for compliance with the PM₁₀ limit values

A Member State may only be exempt from the obligation to meet the limit values for PM₁₀ until the extended deadline of 11 June 2011 if they satisfy **all three** conditions set out in Article 22 of the Directive. The Commission has provided guidance on the process for seeking a time extension in the form of a Communication⁵ and a Staff Working Paper⁶. It is clear from both the Directive and the Commission's guidance that London is not eligible for a time extension as it does not satisfy **any** of these three conditions.

Condition 1 - measures to achieve compliance by the initial attainment date

For this condition to be satisfied, the Directive requires that **all** appropriate measures must have been taken at the national, regional and local level to achieve compliance with the limit values by 1 January 2005. This means that only measures that were actually in place before that date, as opposed to merely being considered, are relevant when considering whether the UK has satisfied this condition. In addition, Member States must identify the pollution sources that those measures were intended to address and explain the extent to which those measures actually contributed to reducing levels of PM₁₀.⁷

The TEN lists eight existing and agreed measures relevant to improving air quality in Greater London. However, only four of these measures were in place by 1 January 2005. The TEN acknowledges that the following four key measures which would have had a substantial impact on air quality were not implemented until after this date:⁸

- *The London Low Emission Zone (LEZ)*
The LEZ is a scheme that imposes a daily fine on all diesel-powered commercial vehicles entering a demarcated zone (which covers most of Greater London) unless they meet certain European emissions standards. Phase 1 of this scheme was not introduced until February 2008.
- *Bus Emissions Programmes*
This involved replacing highly polluting buses and introducing hybrid buses. This was not

⁵ Communication from the Commission dated 26 June 2008 on notifications of postponements of attainment deadlines and exemptions from the obligation to apply certain limit values pursuant to Article 22 of Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

⁶ Staff Working Paper accompanying the 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 Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

⁷ See paragraph 22 of the Communication.

⁸ **Annex 1** Defra, *Technical report to accompany UK PM₁₀ Time Extension Notification forms*, April 2009. See Table 5.14 on pages 86-87.

introduced until after 1 January 2005.

- *Taxi Emissions Programmes*
This involved a phased-in requirement for all licensed taxis to meet a European engine emission standard (known as Euro 3) for particulate matter and introducing low carbon taxis. The first phase of this scheme was not introduced until 1 July 2006.
- *Incentives for early compliance with Euro 5 for Light Goods Vehicles (LGVs)*

This involves providing financial incentives to encourage operators of LGVs to adopt a European engine emissions standard (Euro 5) before it becomes legally binding. This was not introduced until January 2009.

A 2004 report estimated that road transport was responsible for 71% and 70% of total PM₁₀ emissions in 2003 and 2004 respectively in London.⁹ In view of the importance of road transport as a source of PM₁₀ emissions, there can be no question that these measures were “appropriate” for the purposes of the Directive. It was therefore essential that they were implemented prior to 1 January 2005 for the first condition to have been satisfied.

Further, for two of the four measures that **were** adopted by the deadline – the fitting of particulate filters to buses and the introduction of the Congestion Charging Zone – the TEN acknowledges that four years after these measures were introduced there is insufficient information with which to calculate their impact on roadside concentrations of PM₁₀. This clearly fails to satisfy the requirement under the Communication that “*Member States must identify the pollution sources that those measures were intended to address and explain the extent to which those measures actually contributed to reducing concentrations*”.

Of the two measures that were introduced before 1 January 2005 and for which calculations on their impact are available, the combined effect was to reduce roadside concentrations of PM₁₀ by a mere 2.5 micrograms per cubic meter.

The Communication states that the Commission will, in assessing whether Condition 1 has been satisfied, take into account the impact of correct transposition and implementation of the 14 Directives listed in Section 2 of Part B of Annex XV to the Directive. We note that the Commission has issued a Reasoned Opinion (the final step in infringement proceedings prior to referral to the European Court of Justice) for the UK’s failure to properly implement Council Directive 2006/32 relating to energy efficiency.¹⁰ This serious failure by the UK to implement a key Directive which is highly relevant to air quality serves as further evidence that the TEN fails to satisfy the first condition.

⁹ Mattai J & Hutchinson D, *London Atmospheric Emissions Inventory Report 2004*, December 2008, page 3. http://www.london.gov.uk/mayor/environment/air_quality/docs/laei-2004-full-report-dec08.pdf

¹⁰ Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services.

We note with some concern that in the Commission's recent decisions in response to TENs from other EU Member States (for example paragraph 11 of the Commission's decision in relation to Greece), the Commission states that *"in order to assess if all appropriate measures were taken before the 2005 attainment date, it is necessary to consider when an exceedance triggering abatement action pursuant to Directive 1999/30/EC first occurred in the zone, the relevance of the measures taken in relation to the identified sources and the impact of the external factors, such as adverse climatic conditions"*. This test appears to have no basis in the Directive or the Communication. In particular, the impact of external factors is not relevant for the purposes of determining whether a TEN satisfies the first condition. Further, this approach suggests that the Commission considers the implementation of **some** appropriate measures to be sufficient for the purposes of the first condition, when the Directive expressly requires that **all** appropriate measures are to be taken.

It is therefore clear that not all appropriate measures were taken in order to bring London's PM₁₀ levels within the limit values by the original deadline. This, in itself, renders the UK ineligible for a time extension for the Greater London zone. However, for completeness, this letter will discuss the remaining two conditions.

Condition 2 - measures to achieve compliance by the extended deadline

The second condition is that the Member State must demonstrate, through the preparation of an air quality plan, how conformity will be achieved with the PM₁₀ limit values before the extended deadline of 11 June 2011. The Communication requires predictions of how PM₁₀ levels are likely to decline to be "realistic and reliable".¹¹ In addition, they must show that the limit value will not be exceeded by more than the maximum "margin of tolerance" specified in the Directive. For the daily limit value, the margin of tolerance is 50 per cent, i.e. PM₁₀ concentrations cannot exceed 75 micrograms per cubic metre on more than 35 days in a calendar year. For the yearly limit value, the margin of tolerance is 20 per cent, i.e. over a calendar year, average PM₁₀ concentrations cannot exceed 48 micrograms per cubic metre.

As with Condition 1, the Directive requires that the Commission's assessment of whether the Member State will achieve the limit value shall take account of measures that **have been taken** by the Member States. Therefore measures that are merely proposed in the application are not relevant in this assessment. The UK clearly fails to satisfy the second condition for the following reasons:

First, the UK application admits that the daily limit values will not be met along 6 km of London's roads by 2011 based on the quantified measures that form their calculations¹². This is an acknowledgement that the TEN fails to satisfy the second condition, which requires the air quality plan to demonstrate how **all** exceedances will be eliminated.

Second, the application relies on further measures, to be finalised in the Mayor's Air Quality Strategy, to ensure full compliance with the daily limit values along 100 per cent of London's roads.

¹¹ See paragraph 24 of the Communication.

¹² **Annex 1**, page 86.

The Mayor's Air Quality Strategy has not yet been published in draft form and is not due to be finalised until mid 2010, following consultation with the London Assembly and then the public. Even once it is finalised, individual measures will be subject to consultation and environmental impact assessments before being implemented. Even if the Mayor's Air Quality Strategy were to include firm commitments to further measures to improve PM₁₀ levels, it would not be relevant for the purposes of the Commission's assessment of whether the UK has satisfied Condition 2, as only measures that have already been taken by Member States are relevant under the Directive.

Third, the calculations for the Government's baseline assessment include two key measures which the Mayor has publicly stated are likely to be suspended or cancelled. The first of these is the western extension to the Congestion Charging Zone (CCZ). The CCZ was introduced in February 2003. It now imposes a charge of £8 for vehicles entering a demarcated zone covering approximately 22 square kilometres of Central London. In February 2007, the Congestion Charging Zone (CCZ) was extended westwards to include a further 17 square kilometres. On 27 November 2008, the Mayor announced his intention to remove the Western Extension of the CCZ, following a non-statutory consultation with the public and stakeholders. The fact that the Mayor has estimated that the Western Extension was responsible for a 4.2% reduction in PM₁₀ emissions within the extension zone¹³ demonstrates that its removal would significantly undermine the Government's projections.

The second of these measures is the introduction of Phase 3 of the London Low Emission Zone (LEZ). Phase 3, which was scheduled to commence in October 2010, would extend the scheme to cover smaller commercial vehicles such as vans and minibuses. However, the TEN acknowledges¹⁴ that the Mayor intends to suspend or abandon Phase 3 of the scheme subject to the results of a public consultation to be held later in 2009.

The TEN states that in the event that Phase 3 of the LEZ is suspended, the Government would expect the Mayor to put in place other measures that would deliver equal, if not greater, improvements to air quality¹⁵. Again, the assessment of whether London will be compliant with the limit values by the extended deadline must be based on measures that have been taken by Member States, not on unfounded speculation or assumptions regarding future policies.

While the TEN assumes that all measures taken will have the maximum intended benefit on PM₁₀ levels and that those measures not yet taken will be both fully implemented and successful (even in the face of clear indications that they will not), it ignores any factors which might have a detrimental effect on air quality. These factors include:

¹³ Boris Johnson answering question from Murad Qureshi at meeting of London Assembly on 14 January 2009 <http://www.london.gov.uk/mqt/public/question.do?id=24543>

¹⁴ **Annex 1**, See Table 5.14, page 87.

¹⁵ **Annex 1**, see Table 5.14, page 86.

- Population growth¹⁶
- Growth in traffic volumes in London, particularly of freight¹⁷
- Increased use of diesel vehicles in London
- Slower replacement of older, more polluting vehicles due to the current economic downturn
- The removal of the requirement for London's "black cabs" to undergo a mid-year inspection¹⁸
- The promotion of solid biomass as a renewable fuel

More generally, the projections contained in the TEN are unjustifiably optimistic, particularly as they run contrary to the evidence that PM₁₀ levels have in fact increased at a mean rate of around 0.4% per year since the late 1990s.¹⁹ This is a fact acknowledged by the Mayor's Office in its response to Defra's consultation, where it cautions that *"[it] is also worth noting that in recent years concentrations have not decreased in the way that models have predicted."*²⁰

Further, it is unlikely that the measures put forward in the TEN will ensure that exceedences will remain below the limit value plus the relevant maximum margin of tolerance. The UK Government will have to submit data for 2008 by 30th September 2009. We will be looking at this information and other evidence closely as there is every likelihood that the average annual margin of tolerance was exceeded in a number of areas in Greater London.

Finally, the Directive requires a Member State applying for an extension to list all measures that have been considered. Annex XV of the Directive lists the types of measures that should have been considered,²¹ including *"Measures to protect the health of children or other sensitive groups."* The TEN fails to list any measures which are aimed specifically at children or other sensitive groups.

Based purely on measures that have actually been taken, as required by the Directive, rather than on measures which are either merely anticipated or in place but likely to be repealed, London will,

¹⁶ The Mayor's Transport Strategy: Statement of Intent, May 2009, page 13.

<http://www.london.gov.uk/mayor/strategies/transport/pdf/highlights2.pdf>

This estimates that Greater London will need to accommodate 1 million more people by 2031.

¹⁷ The Mayor's Transport Strategy (see note 16 above) estimates that HGV mileage will increase by 10 per cent whilst LGV mileage will increase by up to 30 per cent by 2031.

¹⁸ This requirement was removed on 6 November 2008 following consultation initiated by the Mayor.

¹⁹ King's College London, London Air Quality Network, Report 14, 2006-2007, page 5.

http://www.londonair.org.uk/london/asp/reportdetail.asp?ReportID=lar2006&ReportType=Latest_Report

²⁰ See **Annex 2** letter from Isabel Dedring, GLA to Mr Edelston, Defra, dated 13 March 2009, page 2.

²¹ See Directive Annex XV (B) (3).

based on the UK Government's optimistic projections, fail to meet PM₁₀ levels by the extended deadline of June 2011. The UK therefore clearly fails to satisfy the second condition. This in itself renders the UK ineligible for a time extension for the Greater London zone. However, for completeness, this letter will also discuss the third condition.

Condition 3 - conditions specific to PM₁₀

Finally, the Member State must demonstrate that it has not been possible to comply with the limit values by 1 January 2005 because of one or more of the following reasons specific to emissions of PM₁₀:

- Site-specific dispersion characteristics; **or**
- Adverse climatic conditions; **or**
- Transboundary contributions.

The TEN attributes the failure to meet the initial deadline in Greater London to a combination of site-specific dispersion characteristics and transboundary contributions.

The TEN bases its analysis of Condition 3 on the measured results for Marylebone Road. The Government has used this site because it recorded the highest measured concentrations of PM₁₀, and because these concentrations were similar to the modelled results for roadside locations with the highest concentrations of PM₁₀. However it should be noted that the TEN only includes information from the national monitoring network, and as a result, does not include information from more comprehensive local networks, such as the London Air Quality Network, which show that there are in fact sites in Greater London with higher measured concentrations of PM₁₀ than Marylebone Road.

i. Site-specific dispersion characteristics

This exemption is designed only to allow time extensions where exceptional local characteristics prevent pollutants from dispersing.²² This normally occurs in so called 'street canyons', where the existence of tall buildings on both sides of a road creates a trap in which pollution accumulates.

The Communication sets out the criteria by which the Commission will consider whether site-specific dispersal characteristics are present. First, there must be continuous multi-storey buildings along both sides of the street, and second, the average height of the buildings must be of a certain height in relation to the width of the road.²³

The TEN correctly concedes that Marylebone Road does not satisfy the second limb of the test, as the average height of the buildings alongside the road does not meet the required ratio set out in the Communication.

²² See paragraph 28 of the Communication.

²³ See paragraph 29 of the Communication.

Further, the Communication states that *“Site-specific dispersion characteristics may be claimed only where it can be demonstrated that the exceedance occurs locally in such specific areas and not elsewhere such as in the urban background or along less densely built-up streets in the same air quality zone or agglomeration.”*

There are examples of sites in less densely built-up streets in the same air quality zone which also exceed the limit values for PM₁₀. For example, the Cromwell Road monitoring station, which operates in less densely built up streets (it is in the garden of a museum) exceeded the daily limit value for PM₁₀ on 39 days in 2005. In fact, according to the London Air Quality Network, the highest concentrations of PM₁₀ in London do not occur along built up roads, but in residential streets close to waste management sites, such as in the London Air Quality Network Sites Brent 5, Bexley 4, and Ealing 8.²⁴

ii **Transboundary contributions**

This exemption is in place to take account of situations where breaches of PM₁₀ limit values are caused by emissions that are generated in other countries but transported, as a result of meteorological conditions, to the non-compliant Member State.

However, in order to rely on transboundary contributions as a reason for non-compliance, Article 25 of the Directive requires the concerned Member States to cooperate and, where appropriate, take joint action to reduce these contributions. The Communication clearly states that *“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.”*

No such cooperation has taken place in relation to the breach of PM₁₀ limit values in London. In a response to a request under the Freedom of Information Act by the Campaign for Clean Air in London, Defra admitted that no such consultations had taken place²⁵. The justification given for this lack of action was that the transboundary contributions did not come from any one source. However, this has not prevented other countries from taking action to identify all sources of pollution and engage in consultations with multiple countries, as was evident in the Commission’s recent decision in response to Germany’s TEN.

Even if the UK Government was permitted to rely on transboundary contributions, the TEN fails to establish that the limit values would have been met were it not for the transboundary contributions.

The TEN acknowledges that at the Marylebone Road site there were 118 days in 2005 where the daily limit value was exceeded, i.e. where PM₁₀ levels exceeded 50 micrograms per cubic metre. The TEN estimates that 51 of these days were attributable to transboundary

²⁴See for example:

http://www.londonair.org.uk/london/asp/publicstats.asp?statyear=2005&mapview=all®ion=0&site=BX4&postcode=&la_id=&objective=All

²⁵ See **Annex 3**, email from Robert Vaughan, Defra to Simon Birkett, the Campaign for Clean Air in London, dated 20 April 09.

contributions. The Directive also permits the deduction of estimated contributions of sea salt, which the TEN estimates was responsible for 8 days of exceedance. Even once the days attributable to transboundary contributions and sea salt are deducted, this still leaves 59 days of exceedance, which is well over the daily limit value of 35 days.

The TEN therefore relies on a combination of transboundary contributions **and** site-specific dispersal characteristics to explain why the limit values were exceeded. However, it does not quantify the effect that the site-specific dispersion characteristics would have on reducing the estimated 59 days of exceedance. Instead it relies on a comparison with the Camden Road site, which has more favourable dispersion characteristics, to claim that the combined effect of the transboundary contributions and the site-specific dispersion characteristics would have brought Marylebone Road within the limit value. However, the existence of differences between these two sites other than dispersion characteristics, such as traffic flows and local emissions, makes an accurate comparison impossible.

We would encourage the Commission to look at the London Atmospheric Emissions Inventory Report 2004. In particular, Figure 67²⁶ which shows that the daily exceedances of the PM₁₀ limit values almost exclusively occur in the centre of London.

We also would encourage the Commission to look at the responses to the UK Government's consultation on the TEN²⁷. These responses give a great deal of technical information which casts doubt on the reliability of the estimates given for transboundary contributions (and site-specific dispersion characteristics) in the TEN.

The UK cannot rely on transboundary contributions because it has failed to cooperate with other Member States as required by the Communication. Nor can it rely on site-specific dispersion characteristics, as Marylebone Road does not satisfy the criteria for the presence of such characteristics as set out in the Communication.

Even if the UK was entitled to rely on these PM₁₀ specific conditions, the TEN acknowledges that excluding the effects of transboundary contributions alone would not bring Marylebone Road within the limit values. Further, it fails to quantify the estimated impact of the alleged site-specific dispersion characteristics on the Marylebone Road site.

The TEN therefore clearly fails to satisfy the third condition.

Conclusion

The TEN for Greater London clearly fails to satisfy any of the three conditions that the Directive requires for a time extension to apply.

First, the TEN fails to show that all appropriate measures were taken to achieve compliance with the initial deadline. Key policies were not implemented until after the deadline for compliance had already passed, while others were not even seriously considered.

²⁶ See **Annex 4**.

²⁷ See **Annex 5**.

Second, the TEN fails to demonstrate that Greater London will achieve compliance with the PM₁₀ limit values by the extended deadline.

Third, the TEN fails to demonstrate that Greater London was unable to meet the original deadline because of transboundary contributions or site-specific dispersal characteristics.

The Commission is therefore required by the Directive to raise objections to the TEN. We therefore urge the Commission to adopt a decision rejecting the TEN on the grounds outlined in this letter and to resume its infringement proceedings against the UK for breaching the Directive. If the Commission decides not to raise any objections to the TEN this would be in contravention of the Directive and would therefore be open to legal challenge in both the European Court of Justice and the UK Courts. In these circumstances, ClientEarth will consider all practical legal avenues to oppose the granting of a time extension and to enforce immediate compliance with the PM₁₀ limit values.

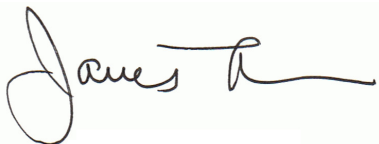
In any event, we would urge the Commission to press the UK Government to provide a revised air quality plan which clearly demonstrates how it will ensure sustainable compliance with PM₁₀ limit values throughout Greater London by 11 June 2011. If the deadline is extended and no credible plan is in place, the policies which are urgently needed to make London's air safer to breath will be further delayed with the inevitable result that London will still be in breach of PM₁₀ limit values when the June 2011 deadline arrives. This will subject the people of London to even more years of dangerous levels of PM₁₀, resulting in further health problems and deaths.

Allowing a time extension for PM₁₀ would also set a dangerous precedent for the enforcement of the limit values under the Directive for levels of Nitrogen Dioxide (NO₂). The Directive requires compliance with certain limit values for NO₂ by 1 January 2010. As with PM₁₀, the Directive allows Member States to extend this deadline, in this case to January 2015. The UK looks certain to be in breach of the limit values for NO₂ by the initial deadline unless urgent action is taken. In this context, it is important that the Commission sends a strong signal to the UK Government, and other Member States, to encourage a timely and robust response to tackling NO₂ pollution.

ClientEarth acknowledges the commitment that the Commission has shown to enforcing European air quality legislation. We urge the Commission to continue to take firm action, which we believe is essential to maintaining the credibility of the entire European air quality regime and safeguarding the health of the people of Europe.

Whilst I do not expect a detailed response to this letter, I would be interested to know of your views on any significant points of disagreement. Please do not hesitate to contact me if there is any aspect of the letter that you would like to discuss.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Thornton', is written over a light green rectangular background.

James Thornton, CEO ClientEarth

List of Annexes

1. Technical report to accompany UK PM10 Time Extensions Notification forms, April 2009.
2. Letter from Isabel Dedring, Greater London Authority, to Mr Edelston, Defra, dated 13 March 2009.
3. Email from Robert Vaughan to Simon Birkett dated 20 April 2009.
4. Extract from the London Atmospheric Emissions Index 2004.
(See http://www.london.gov.uk/mayor/environment/air_quality/docs/laei-2004-full-report-dec08.pdf for the full report)
5. Responses to Defra's consultation on the TEN.