

# 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)

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

By email and registered post: [stavros.dimas@ec.europa.eu](mailto:stavros.dimas@ec.europa.eu)

4 May 2009

Dear Commissioner Dimas

## **European Commission urged to send final written warning to United Kingdom over dangerous airborne particles (PM<sub>10</sub>)**

I am writing to you on behalf of the Campaign for Clean Air in London (CCAL) to urge the European Commission (the Commission) to send the United Kingdom (UK) a Reasoned Opinion (i.e. final written warning) for failing to comply with the European Union's (EU's) standard for dangerous airborne particles known as PM<sub>10</sub>.

Such action would continue the infringement action launched by the Commission on 29 January 2009. The Commission's press release about the first stage of legal action can be seen at:

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

CCAL hopes that others will support its call for prompt further legal action against the UK.

## **'Premature deaths' and 'amount of time lost per statistical victim'**

Underlying all CCAL's concerns about poor air quality is its impact on the health of people.

In this regard, Londoners have been told for several years that dangerous airborne particles resulted in some 1,031 premature deaths in London in 2005. The latest European Environment Agency report (published on 24 March 2009), titled 'Spatial assessment of PM<sub>10</sub> and ozone concentrations in Europe (2005)', indicated that some 650 people per million people of 30 years of age and older may have died from PM<sub>10</sub> in the UK in 2005. This would represent some 2,900 people in London (based on London's age profile and assuming conservatively that it has average UK air quality). Related research by Kunzli et al (2000) suggests that the amount of time lost per statistical victim may be 9.8 years equating to a change in life expectancy of 0.6 years (7.2 months) in the total population.

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The UK’s National Air Quality Strategy published in 2007 made no reference to premature deaths or the amount of time lost per statistical victim after earlier official publications had made such references. Instead the national strategy referred only to an estimated reduction in life expectancy of every person in the UK of an average of 7-8 months with an equivalent health cost of up to £20 billion each year.

CCAL has written therefore to the Secretary of State for Health asking the Department of Health: for urgent assistance to clarify the full extent of the health impact of poor air quality in Greater London; and to commit to a major public information programme to communicate updated similar information at least annually in future.

**Response please:** CCAL wishes to bring to your attention now the urgent need for greater clarity on the true health impact of poor air quality in London. CCAL may write to you again on this subject, depending on the reply it receives from the Secretary of State for Health, but any clarification you can provide now on the relevance and/or importance of ‘premature deaths’ and ‘amount of time lost per statistical victim’ as meaningful measures of the impact of poor air quality would be much appreciated. In CCAL’s view, the use of an average change in life expectancy across the total population creates the impression (wrongly) that the health impact of poor air quality is small.

## **Background to current legal action against the UK on dangerous airborne particles (PM<sub>10</sub>)**

The Commission wrote first to the UK government on this matter in June 2008. The Commission’s press release can be seen at:

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

In June 2008, the Commission gave Member States until 31 October 2008 to notify a request for a time extension (TEN) to comply with the EU limit values for PM<sub>10</sub>. As far as CCAL can determine, only the UK, Cyprus, Estonia, Portugal, Slovenia and Sweden made no effort to notify such a request for any of their zones or agglomerations by January 2009. See a table prepared by the Commission dated 14 January 2009:

[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)

Since then Cyprus and Portugal have notified their request for a time extension, bringing the total number of countries submitting their full notification to 17, seemingly by the deadline set in the Letter of Formal Notice (i.e. first written warning) of end March 2009. See:

[http://ec.europa.eu/environment/air/quality/legislation/time\\_extensions.htm](http://ec.europa.eu/environment/air/quality/legislation/time_extensions.htm)

CCAL believes that the UK responded to the Commission’s Letter of Formal Notice by confirming that it planned to miss that second deadline also. See:

<http://www.theyworkforyou.com/wrans/?id=2009-04-20a.362.6&s=gardner#g362.7>

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The UK government announced finally on Friday 24 April 2009 that it had submitted the UK's application to the Commission for a time extension to meet PM<sub>10</sub> air quality limits. See:

<http://www.defra.gov.uk/news/2009/090424.htm>

In CCAL's view, the UK government knows it has submitted a weak and/or flawed TEN for PM<sub>10</sub>.

## **Reasons for launching promptly further legal action against the UK**

CCAL urges the Commission to escalate infringement action now against the UK on PM<sub>10</sub> inter alia for the following reasons:

- i. first legal deadlines must mean something: what incentive is there for any Member State to comply with any first deadline set by the Commission (i.e. 31 October 2008 in this case) if it need wait only for a new deadline to be set by a subsequent Letter of Formal Notice (and then comply perhaps with that one)?;
- ii. second legal deadlines must mean much more than first legal deadlines: having failed to comply with the Commission's first (reasonable) deadline, the UK has clearly failed to comply substantively with the Commission's second (very reasonable) deadline i.e. that set by the Letter of Formal Notice. Worse still, the UK missed the second legal deadline by nearly four weeks by notifying its request for a time extension for PM<sub>10</sub> on 24 April 2009;
- iii. the UK has still not submitted a complete TEN for PM<sub>10</sub> that includes Gibraltar: the UK still does not seem to have notified a time extension request for Gibraltar despite breaches of the EU limit values for PM<sub>10</sub> there in 2006 and 2007 – even though the UK is the Member State responsible for Gibraltar. Without such a time extension being submitted and allowed, the Commission should pursue urgently and vigorously infringement action against the UK in respect of Gibraltar;
- iv. there was no legal justification for the UK's delay: contrary to the impression created by the UK government, there was no legal requirement for the UK to hold the public consultation which it gave as its excuse for missing the 31 October and end of March deadlines. The government has confirmed this fact to CCAL - please contact me if you wish to see the relevant evidence. CCAL set out in detail in letters to you and the UK government dated 1 November 2008 and 22 February 2009 respectively the detailed reasons why the UK has no technical or moral case for missing the deadlines set by the Commission. Those letters are attached as evidence;
- v. the UK's delayed TEN for PM<sub>10</sub> is non-compliant and includes a flawed plan to improve air quality in London: the UK remains in breach of the daily and annual average limit values for PM<sub>10</sub> that are the subject of the current infringement action – and will remain so unless it obtains a time extension to comply with those limit values (which CCAL considers is most unlikely based on the current application and plan). Even the UK's consultation document on its planned TEN for PM<sub>10</sub> admitted that it does not have a plan to comply with EU limit values for PM<sub>10</sub> along at least six kilometres of roads in London by June 2011 (never mind the fact that the Mayor

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of London has committed to removing the western extension of the congestion charging zone and suspending Phase 3 of the London Low Emission Zone (on which the government’s TEN for PM<sub>10</sub> depends)). It is clear therefore that the current infringement action cannot be closed unless the UK obtains a time extension (if it does): infringement action therefore needs to be maintained or in CCAL’s view escalated promptly;

- vi. a distinction must be drawn between the many countries that have met the Commission’s deadline(s) and the UK (and perhaps three only other countries) that have met neither deadline: only the UK, Estonia, Slovenia and Sweden seem to have missed both deadlines set by the Commission. Surely the Commission must draw a strong distinction between the majority of EU countries that met its deadlines and the very small number of countries that did not;
- vii. the time extension process for dangerous airborne particles (PM<sub>10</sub>) needs to set a robust precedent for early action next year on nitrogen dioxide (NO<sub>2</sub>): a precedent needs to be established that the Commission’s deadlines for air pollution must be met and complied with in full. This is true generally but even more so given that the time extension process for much more extensive breaches of EU limit values for nitrogen dioxide (NO<sub>2</sub>) is about to begin (and has already done so for some countries). Please note that over 100 UK cities breached in 2008 what will be the EU’s annual limit value for NO<sub>2</sub> from January 2010; and
- viii. the reality of ongoing and escalating infringement action – run in parallel while the Commission considers the UK’s TEN for PM<sub>10</sub> - is much needed if the UK is to be persuaded to submit a more convincing plan to comply with EU limit values for PM<sub>10</sub>: as you know, the UK particularly has a track record of non-compliance with EU air pollution legislation. It would most unfortunate therefore if the Commission decides only in late January 2010 (i.e. nine months after the UK’s TEN for PM<sub>10</sub> was lodged) that the UK’s current TEN is flawed (as CCAL expects) and only begins then further legal action against the UK. That would have meant a delay of nearly 15 months since 31 October 2008 from beginning robust legal action to protect UK citizens from dangerous airborne particles. Conversely, if a Reasoned Opinion is issued now and the Commission commences the process of seeking a judgment against the UK by the European Court of Justice, time will be saved later if the Commission concludes by January 2010 that the UK has failed to comply with the conditions for a time extension on PM<sub>10</sub>. Clearly, if CCAL is wrong and the UK does obtain a time extension on PM<sub>10</sub>, the Commission could suspend later its legal action against the UK.

In CCAL’s view, only the reality of ongoing and escalating legal action against the UK for breaching EU limit values for PM<sub>10</sub> will persuade it to submit a convincing plan to improve air quality in London.

## **Detailed reasons for rejecting the UK’s current TEN**

CCAL believes you may be aware of its carefully considered view that the UK does not meet any of the three pre-conditions necessary for it to obtain a time extension until 11 June 2011 to comply with the EU limit values for PM<sub>10</sub> throughout London.

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Furthermore, as stated earlier, the UK’s TEN for PM<sub>10</sub> relies in London in substantial part on Mayor Johnson implementing on schedule Phase 3 of the London Low Emission Zone and keeping in place the western extension of the congestion charging zone. Mayor Johnson has announced that he will suspend the former and remove the latter. As you will be aware, Community law is clear that only *measures already taken* by Member States are relevant for the purpose of gaining an extension of time to secure compliance with ambient air quality standards. CCAL is seeking currently binding commitments from the government to address this particular weakness in the UK’s TEN for PM<sub>10</sub>.

CCAL plans to write to you shortly setting out in detail its views on the woeful inadequateness of the UK’s current TEN for PM<sub>10</sub>. That submission will be substantially along the lines of CCAL’s letter to the government dated 22 February 2009 which commented on the UK’s proposed TEN for PM<sub>10</sub>. CCAL’s submission will include, amongst other things, further details such as evidence that the UK failed to make adequate effort to tackle the transboundary problem that it asserts exists in London.

## **The way ahead: ‘throw the rule book at the UK’ unless it submits a convincing air quality plan**

With major flaws in the UK’s current TEN for PM<sub>10</sub>, CCAL is urging the government to submit to the Commission in the next few weeks a revised and much more convincing package of measures to improve urgently air quality in London. If the government submits such a package and commits unequivocally to ensure it is implemented urgently, CCAL would not object to the Commission ‘turning a blind eye’ to the undeniable fact (in CCAL’s carefully considered view) that the UK’s TEN on PM<sub>10</sub> has major flaws and allowing such a time extension to be obtained – that would be an acceptable ‘win-win’ outcome.

If the UK government persists however with its current flawed and wholly unconvincing plan to improve air quality in London, CCAL urges the Commission to ‘throw the rule book’ at the UK and reject its TEN on PM<sub>10</sub> for failing to meet the necessary pre-conditions. Sadly, given the current likelihood of this outcome and to avoid months of unnecessary delay, CCAL urges the Commission to send the UK now a second and final written warning (i.e. Reasoned Opinion) for failing to comply with the EU limit values for PM<sub>10</sub> in 2005, 2006 and 2007. CCAL would rather the UK’s current TEN for PM<sub>10</sub> is rejected than see a weak and unconvincing plan approved which would result inevitably in failure soon thereafter with serious negative consequences for public health.

It seems, sadly, that only robust legal action is going to persuade the current UK government to take effective action to improve air quality in London. In CCAL’s view therefore, the Commission is more likely to ensure the ‘win-win’ outcome that we all seek if it presses on quickly now with sending the UK a Reasoned Opinion. That is why CCAL has made this submission to you at this time.

CCAL is not requesting a detailed reply to this letter - with the exception of the request for any clarification you can provide now on the relevance and/or importance of ‘premature deaths’ and ‘amount of time lost per statistical victim’ as meaningful measures of the impact of poor air quality. CCAL would rather your staff devoted it’s time to conducting the most rigorous review of the UK’s time extension notification.

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CCAL acknowledges and thanks you and your staff for all the excellent work you are doing together to improve air quality across Europe.

I look forward to hearing from you in respect of the health impacts of poor air quality. Please reply to the confidential email address provided separately.

With best wishes.

Yours sincerely

Simon Birkett  
Principal Contact  
Campaign for Clean Air in London

Enclosures

By hand:

Winston Fletcher, Chair, The Knightsbridge Association  
Carol Seymour-Newton, Honorary Secretary, The Knightsbridge Association

Cc:

The Rt. Hon. Hilary Benn MP, Secretary of State for Environment Food and Rural Affairs  
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  
Ms Nancy Kontou, Head of Cabinet  
Mr Martijn Quinn, Deputy Head of Cabinet  
Ms Jane Barton, Cabinet Member  
Karl Falkenburg, Director-General, Environment DG  
Jos Delbeke, Directorate C: Climate Change and Air, Environment DG  
Stefan Moser, C3 Clean Air & Transport, Environment DG

## **ORGANISATIONS**

Helen Ainsworth, EU and International Air Quality, Defra  
Professor John Ayres, Chairman, COMEAP  
Jenny Bates, London Regional Campaigns Co-ordinator, Friends of the Earth  
Patricia Brown, Chief Executive, Central London Partnership  
The Lord Coe, Chairman, LOCOG  
Peter Daw, Interim Strategy Manager (Air Quality, Energy and Climate Change), GLA  
Isabel Dedring, Environment Adviser to the Mayor of London  
Sir Liam Donaldson, The Chief Medical Officer, Department of Health

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Dame Judith Mayhew, Chair, New West End Company  
Dr Robert Maynard CMG, Health Protection Agency  
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  
The Lady Valentine, Chief Executive, London First  
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  
James Cleverly AM, Conservative, Environment Committee, London Assembly  
Roger Evans AM, Conservative, Environment Committee, London Assembly  
Nicky Gavron AM, Labour, Environment Committee, London Assembly  
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  
Mike Tuffrey AM, Liberal Democrat, Environment Committee, London Assembly