



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

2 October 2009

Dear Commissioner Dimas

Time Extension Notification (TEN) to apply PM₁₀ limit values in Greater London

I write further to my letter of 27 July 2009 to comment on two subsequent developments.

1. UK response to the European Commission's request of 15 June for additional information on the UK PM₁₀ notification (the 'Response')

I was unable to comment on the Response in my previous letter as the Department for Environment, Food and Rural Affairs (Defra) did not make it publicly available on its website until the day after I sent my previous letter. For ease of reference I have followed the headings used in the Commission's request for further information to the UK Government dated 15 June 2009.

Q2. First condition – measures to achieve compliance with the limit values for PM₁₀ before the initial attainment date

To assess whether the first condition had been complied with, the Commission requested information about the number of exceedances in the years before 2005. The Response shows that both the daily and annual PM₁₀ limits were breached in London in 2001, 2002, 2003 and 2004 and that there was no discernible improvement over this period. This information is consistent with the trend I highlighted in my previous letter; PM₁₀ levels have in fact increased at a mean rate of around 0.4% per year in London since the late 1990s.

The Commission also requested that the Government provide further information on the improvement in air quality brought about by the measures implemented before 2005. It is unclear whether the Government has provided any further information in this respect. Defra published a January 2009 document titled 'Evidence provided by the Mayor of London to the UK Government, to inform their work to meet the air quality limit values' alongside the Response. This document provides further information on measures taken to tackle PM₁₀ pollution in London, but most of these - such as the Low Emission Zone and retro-fitting of particulate filters to London's bus fleets - were not implemented until after 1 January 2005. This information is therefore irrelevant for determining compliance with the first condition and further illustrates the UK's failure to take all measures possible to achieve compliance before the initial attainment date.

The Government has therefore clearly failed again to prove that the measures taken prior to the initial attainment date actually contributed to reducing concentrations of PM₁₀. In consequence, it has failed to satisfy the first condition for obtaining a time extension under the Directive.

Q4. Air Quality Plan & consistency with requirements of Part A of Annex XV of the Directive

The Commission refers to the fact that, because Greater London continued to exceed the limit values after 1 January 2005, the UK was required to prepare a short-term action plan under Article 7(3) of the Air Quality Framework Directive to ensure that the duration of the exceedence is kept as short as possible.

The Response admits that no such plan was put in place, and justifies this on the grounds that exceedences of the PM₁₀ limit values are caused mainly by contributions of secondary pollutants and that the contribution of local tailpipe emissions to local concentrations of PM₁₀ is small.

The letter cites a 2007 report by Charron et al in support of these claims (enclosed as Annex 1). While the report does demonstrate that secondary pollutants are a major source of PM₁₀, the following extracts show that it also highlights the importance of tailpipe emissions in contributing to exceedences of the limit values:

*'The higher frequency of episodes breaching the limit value at the road site than at the rural site and the higher frequency of PM₁₀ concentrations above the limit value on weekdays shows that high regional contributions are additional to local and urban emissions. Local emissions mainly due to traffic were the second important contributor to the exceedence, while the contribution of the urban background of London was less important than the local emissions and the regional background.'*¹

The Government has adopted a selective and misleading interpretation of a report which in fact serves to highlight that tackling tailpipe emissions is essential to reducing both the number of exceedences of the limit value and the associated levels of toxicity. The conclusions of the Charron report are consistent with other studies in this field, such as the London Atmospheric Emissions Inventory Report 2004, to which I referred in my previous letter.

Further, PM₁₀ data for 2008 that the Government recently submitted to the Commission gives 'proximity to a major road' as a reason for all of the 57 exceedences of the daily limit value at London Marylebone Road (See Form 11h enclosed as Annex 2). This is a clear acknowledgement by the Government of the importance of tailpipe emissions, which contradicts the statement it made in the earlier Response.

By failing to prepare a short-term action plan, the Government has further demonstrated that they did not take all appropriate measures to achieve compliance before the initial

¹ Charron et al (2007) page 1960.

attainment date. It has therefore failed to meet the first condition for obtaining a time extension under the Directive.

Finally, I would stress that the Government cannot choose which elements of air quality directives it complies with; it is essential that European air quality law applies equally to all Member States in order to ensure consistent minimum standards of environmental and health protection throughout the Community.

Q5 Status of implementation of Community air quality legislation

The Commission refers to ongoing infringement action relating to the UK's failure to transpose Directive 2006/32 EC (on energy end-use efficiency).

The Response states that the Directive has been implemented through agreements, with formal transposition to be notified to the Commission shortly. However, it is a well established principle of EU law that directives must be implemented through legally binding rules and that voluntary agreements do not generally satisfy this requirement. This is particularly true of directives, such as those relating to air quality, which are adopted for the protection of human health.²

The Commission also refers to the UK's projected non-compliance with Directive 2001/81 EC (on national emissions ceilings for certain atmospheric pollutants). The Response states that this non-compliance would have little or no effect on compliance with the PM₁₀ limit values. This is somewhat surprising given the Government's emphasis elsewhere in the Response on the importance of background regional contributions as a cause of non-compliance with PM₁₀ limit values. A report published today by the European Environment Agency shows that the UK continues to be the largest emitter of oxides of nitrogen (NO_x) in the EU and is predicted to exceed its 2010 national emission ceiling for NO_x by 7%.³

2. The Western Extension to the Congestion Charging Zone (WEZ)

As I explained in my previous letter, one of the ways in which the TEN fails to demonstrate that it satisfies the second condition (measures to achieve compliance by the extended deadline) is that it relies on two key measures which the Mayor of London has publicly stated are likely to be suspended or cancelled. One of these measures is the WEZ. Since my previous letter the Mayor has publicly made an unqualified commitment to removing the WEZ, without giving any indication of what measures might be introduced to offset the air quality impacts of this decision (see letter dated 25 September 2009 enclosed as Annex 3).

You will recall that the TEN states that if the WEZ is suspended, the Government would expect the Mayor to put in place other measures delivering equal, if not greater, improvements to air quality. However, the Government has recently rejected a freedom of information request relating to discussions between the Government and the Mayor of London on this issue (see letter dated 15 September 2009 enclosed as Annex 4), so it remains unclear whether this is a reasonable

² See for example Case C-59/89 Commission v Germany [1991] ECR I-2607.

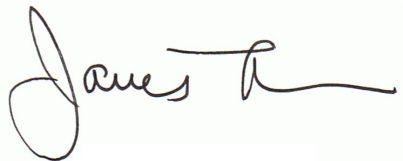
³ *NEC Directive Status report*, 2008 EEA Technical report No 11/2009.

assumption. Even if the Mayor was to decide to put in place such measures, there would inevitably be some delay before they could be fully implemented and no certainty that they would be effective in reducing concentrations of PM₁₀.

The additional information provided by the Government and the recent developments in relation to the WEZ confirms again that the TEN fails to satisfy the requirements for a time extension. We would therefore urge the Commission to reject the TEN and escalate enforcement proceedings against the UK for its continued breach of the Directive. Again, I would stress that if the UK were to submit (and implement fully) a credible air quality plan for Greater London, this 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.

I should be grateful if you would acknowledge receipt of this letter. Do not hesitate to contact me if you have any queries or comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read "James Thornton", written on a light green rectangular background.

James Thornton

CEO, ClientEarth