



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

13 October 2009

Dear Commissioner Dimas

**Time Extension Notification to apply PM<sub>10</sub> limit values in Greater London**

I write further to my letters of 27 July and 2 October 2009 in response to the publication last week of the Mayor of London's draft Air Quality Strategy (the 'Strategy').

The UK government's Time Extension Notification for Greater London (TEN) expressly relied on the measures to be included in the Strategy in order to satisfy the second condition for eligibility for a time extension under Article 22 of the Directive.<sup>1</sup> The second condition requires that the government demonstrates how conformity will be achieved with the limit values before the extended deadline of 11 June 2011. However, by postponing vital air quality measures until 2012 and relying instead on vague and unquantified measures, the Strategy fails to achieve this.

As I explained in my letter dated 27 July 2009, the calculations for the Government's baseline assessment for compliance with the limit values by 2011 included two key measures which the Mayor had at that time publicly stated were likely to be suspended or cancelled.<sup>2</sup> These measures were Phase 3 of the Low Emission Zone (LEZ) and the Western Extension to the Congestion Charging Zone (WEZ).

The Strategy postpones the introduction of phase 3 of the LEZ from 2010 until 2012. It also reiterates the Mayor's commitment to removing the WEZ, (although contrary to previous comments by the Mayor outlined in my previous letter, it is acknowledged that this is subject to public and stakeholder consultation). Similarly, measures aimed at reducing emissions from London's taxis and buses are not scheduled to be implemented until after 2012.

The TEN stated that if Phase 3 of the LEZ were to be suspended, the Government would expect the Mayor to put in place other measures that would deliver equal, if not greater, improvements to air

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<sup>1</sup> Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

<sup>2</sup> Technical report to accompany UK PM<sub>10</sub> Time Extension Notification forms, April 2009, Table 5.14, pages 86-87.

quality. However, the Strategy does not specify alternative measures that would deliver equivalent benefits in the period of postponement. The Strategy instead relies on a range of vague and unquantified measures to deliver compliance with the limit values by 2011.

These measures are set out in Policy 3: *'targeting air quality hotspots through a package of localised measures'* and Policy 6: *'Air quality action days and special measures.'*

However, the Strategy does not specify what measures will be included in Policy 3, stating merely that the Mayor *'will develop and implement tailored action plans for major air quality hotspots'* and suggesting a range of measures such as street vegetation and traffic management which might be included in these plans.

Similarly, Policy 6 requires further cooperation with boroughs and central government in order to develop firm, detailed measures: *'Detailed assessments of potential options (such as traffic diversions) and their impacts will be carried out in conjunction with boroughs.'*<sup>3</sup>

There will inevitably be a considerable delay whilst these measures are developed, consulted on and eventually implemented. Further, there is no certainty that they will be effective in reducing concentrations of PM<sub>10</sub>. By contrast, measures such as the WEZ and Phase 3 of the LEZ have been proven to be effective either in London itself or in other EU cities. The reliance on air quality action days also seems at odds with the government's assertion that short term action plans are ineffective in tackling PM<sub>10</sub> concentrations.<sup>4</sup>

The Strategy also relies on 'pre-compliance' with measures introduced in 2012 in order to achieve compliance with the limit values by 2011.<sup>5</sup> Pre-compliance occurs when a standard is adopted voluntarily in advance of legal or other requirements, for example where a driver of a light goods vehicle buys a Euro 3 vehicle in advance of the introduction of Phase 3 of the LEZ. Voluntary compliance is inherently uncertain and therefore predictions of compliance based on pre-compliance are not *'realistic and reliable.'*<sup>6</sup>

Finally, the Strategy does not show PM<sub>10</sub> projections for 2011, only 2012. This makes an accurate assessment of whether legal compliance can be achieved by 2011 impossible.

The Strategy clearly fails to demonstrate how compliance will be achieved by the extended deadline, and therefore fails to satisfy the second condition for eligibility for a time extension under the Directive. My letter of 27 July 2009 explained in detail how the TEN also fails to satisfy the first and

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<sup>3</sup> Page 53 of the Strategy.

<sup>4</sup> UK response to the European Commission's request of 15 June for additional information on the UK PM10 notification, page 17.

<sup>5</sup> See for example page 48 of the Strategy.

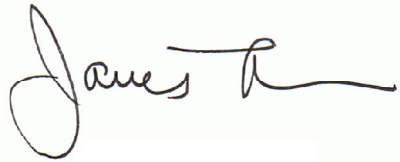
<sup>6</sup> Communication from the Commission dated 26 June 2008 on notifications of postponements of attainment deadlines and exemptions from the obligation to apply certain limit values pursuant to Article 22 of Directive 2008/50/EC on ambient air quality and cleaner air for Europe, Paragraph 24, page 7.

third conditions under the Directive. This adds further weight to our assertion that the Commission must reject the TEN for Greater London and escalate infringement action against the UK.

The Strategy is now being scrutinised by the environment committee of the London Assembly before a further draft is published for public consultation. ClientEarth will set out our concerns in the consultation process. If the Mayor responds to such concerns by producing a revised Strategy which adequately addresses the urgency of London's air quality problems and clearly demonstrates how compliance will be achieved by 11 June 2011, this would considerably strengthen any revised air quality action plan the government might submit in support of the TEN. This would reduce the need for the Commission to escalate infringement proceedings and may make citizens less inclined to take legal action in relation to the TEN.

Please acknowledge receipt of this letter.

Yours sincerely,

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

**James Thornton**

**CEO, ClientEarth**