

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

Commissioner Potočnik
European Commissioner for the Environment
European Commission
Rue de la Loi 200
B-1049 Brussels
Belgium

By registered post and email to: janez.potocnik@ec.europa.eu

17 June 2010

Dear Commissioner Potočnik

Reject UK’s reapplication for a time extension to comply with EU daily limit value for PM₁₀

Daily limit value for PM₁₀ will be breached soon in London for the whole of 2010 and is ‘highly likely’ to be breached again in 2011. Weakly, the Government ‘expects’ compliance in 2011

‘Clean Air in London’ invites Commissioner Potočnik to London on a fact finding visit

I am writing to you on behalf of the cross-party Campaign for Clean Air in London (CCAL) about matters relating to the UK’s failure to comply with European Union (EU) air quality laws in London. Information about CCAL, including a list of its supporters, can be found on its website at www.cleanairinlondon.org. Please treat this letter as a formal objection to the United Kingdom’s (UK’s) resubmission of a time extension notification to comply with the EU daily limit value for dangerous airborne particles (PM₁₀) in London (second TEN for PM₁₀).

Warm welcome for European Commission’s recent escalation of legal action against UK over PM₁₀

CCAL warmly welcomes the European Commission’s (Commission’s) action in sending a second and final written warning (i.e. Reasoned Opinion) to the UK on 3 June 2010 for breaching limit values for PM₁₀ in London since 2005 (up to and including 2008). The Commission’s announcement can be seen at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/687&format=HTML&aged=0&language=EN&guiLanguage=en>

It is commendable, in many ways, the Commission:

- spent over seven months undertaking its review of the UK’s first TEN for PM₁₀ before rejecting it on 11 December 2009 (for not even meeting the minimum requirements for a time extension); and
- waited patiently, over 16 months instead of the usual two, for the UK to take action to improve air quality after sending the first written warning (Letter of Formal Notice) to the UK on 27 January 2009

...before escalating the current infraction action.

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CCAL encourages the Commission to escalate legal action more quickly in future given public health is at risk and the UK authorities have shown no willingness to tackle the issues at the heart of London's air quality problems e.g. transport. Indeed, we have seen only backward steps on road transport measures in London since the Commission sent the first written warning. As if to add insult to injury, the Mayor of London (Mayor) announced on 4 February 2009 – just six days after the first written warning – his decision to suspend Phase 3 of the London low emission zone (LEZ3) which was designed to protect over 15% of those worst affected by poor air quality in London from 4 October 2010 (which was included in the UK's first TEN for PM₁₀).

Please therefore reject the UK's latest request for a time extension for PM₁₀ and move swiftly to take the current case to the European Court of Justice.

CCAL supports fully all the points made in submissions to the Commission by ClientEarth and Environmental Protection UK in relation to the UK's second TEN for PM₁₀ unless in conflict with this letter in which case this letter prevails.

CCAL hopes that others will also write to the Commission urging it to reject the UK's second TEN for PM₁₀. In London, it seems as though, if it were not for the Commission's determined action, there would be no good news on air quality. There is a wonderful opportunity, if action by the Mayor and the Government is triggered by the Commission's efforts, to show how air pollution can be tackled successfully in large cities.

Summary

CCAL warmly welcomes the Commission's recent escalation of infraction against the UK for breaching limit values for PM₁₀ in London (and Gibraltar).

CCAL urges the Commission to reject the UK's reapplication for a time extension until 2011 to comply with the daily limit value for PM₁₀ in London (i.e. second TEN for PM₁₀). CCAL sets out eight reasons why the Commission should reject the UK's request emphasizing particularly:

- i. the daily limit value for PM₁₀ will be breached soon in London for the whole of 2010 (i.e. one monitoring site is already showing 34 exceedances and many others are showing elevated levels of pollution). Against this background, there is a high risk that the daily limit value will be breached again in 2011. It is not credible therefore for the Government and/or the Mayor to justify a time extension simply by asserting that 'compliance with the daily limit value in Greater London is expected to be achieved in 2011'. Letters are attached which were sent to the Government by two highly respected local authorities, Camden (Exhibit 1) and the City of London Corporation (Exhibit 2), which support CCAL's assessment that the daily limit value for PM₁₀ will not be met throughout London in 2011. Please note these were obtained by CCAL from the Government under the Freedom of Information Act;

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- ii. the Government’s second TEN for PM₁₀ is misleading and flawed. The Government has correctly excluded the expected benefit due to arise from Phase 3 of the London low emission zone (LEZ3) which was planned to enter into force on 4 October 2010 (but was postponed by the Mayor on 4 February 2009 and for which a final consultation is now underway) and the impact of the Mayor’s draft Air Quality Strategy. However, the Government has incorrectly included the benefit already being obtained from the western extension of the congestion charging zone (WEZ) even though the Mayor has stated categorically that he will remove it. A map and comment published by Transport for London (Exhibit 3) shows that, if the WEZ is removed, the daily limit value for PM₁₀ is due to be breached in that part of London in 2011. This is not surprising since the WEZ is a crucial mitigation measure in a heavily trafficked part of London; and
- iii. CCAL understands the Commission was required by Article 20 of the Directive on ambient air and cleaner air for Europe (‘the Directive’) to publish by 11 June 2010 guidance for Member States on the ‘demonstration and subtraction of exceedances attributable to natural sources’. Pending that guidance, the UK has used its own methodology to adjust an expected 43 exceedances down to 32. This reduction is highly implausible given exceedances typically occur on days when air is still and there is no sea breeze in London! Please insist that the UK demonstrates applicability and if demonstrated successfully then recalculates the number of its expected exceedances using fully the Commission’s recommended methodology. CCAL considers it highly likely such a calculation will show breaches of the daily limit value for PM₁₀ in London in 2011.

In CCAL’s view, the Commission should:

- insist, before considering the second TEN for PM₁₀ further, the Government gives an undertaking to the Commission that the WEZ will not be cancelled or removed (i.e. so that the notification is not misleading or incorrect); or
- reject immediately the UK’s second TEN for PM₁₀ for wrongly including the WEZ and not meeting the minimum requirements for a time extension (or otherwise).

The current statutory consultation on the Mayor’s proposed removal of the WEZ shows the daily limit value for PM₁₀ is due to be exceeded in 2011 (having been attained in or around Brompton Road). Even if the mitigation measures in the Mayor’s draft Transport Strategy were to be included in the second TEN for PM₁₀ (and they are not) the consultation documents for the WEZ’s removal make clear that measures to mitigate the adverse impact on public health of the removal of the WEZ will not do so for years thereafter. In other words, the UK’s second TEN for PM₁₀ should be rejected whether or not the WEZ is excluded.

CCAL is pleased to invite Commissioner Potočník to London on a fact finding visit to assess, at first hand, the poor state of air quality in London and the negative impact of air quality policies currently being pursued here by the Mayor and the Government.

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Finally, CCAL wishes to bring to the Commission’s attention the Mayor’s statement on page 24 of his draft Air Quality Strategy (Exhibit 4) that the annual mean limit value for PM₁₀ was breached in London in 2009 (at Lambeth – Bondway Interchange). Such an exceedance would be a clear breach of the requirement in the Directive that limit values once attained may not be exceeded. Please note also the UK has failed to transpose the Directive into UK law by the deadline required by the Directive of 11 June 2010.

Reject UK’s second TEN to comply with daily limit value for PM₁₀ in London

You will be aware that a final act of the previous Government was to submit on 3 May 2010 its reapplication for a time extension until 2011 to comply with the daily limit value for PM₁₀ in London.

Submitted on a Bank Holiday, just three days before the General Election when the re-election of the Labour Government was looking extremely unlikely, this may have been a cynical move to embarrass the new Government and the Conservative Mayor of London (and perhaps the Commission) in late 2011 – if a time extension is approved – given it is highly likely the daily limit value for PM₁₀ will be breached in London at that time.

Imagine how shocking those breaches will ‘look’ in the last few months before the London 2012 Olympics if a time extension is granted. Bear in mind too that infringement action is likely (rightly) to commence against the UK by October 2011 (or soon thereafter) for breaching limit values for nitrogen dioxide (NO₂) in London (which has the highest mean concentrations of NO₂ of any capital city in western or eastern Europe).

The main purpose of this letter is to lodge a formal objection to the UK’s second TEN for PM₁₀ in London. CCAL urges the Commission to reject the UK’s reapplication, *inter alia*, for the following eight reasons:

1. 4,300 premature deaths per year in London

The Mayor of London estimated, in his draft Air Quality Strategy published for consultation on 28 March 2010, that some 4,300 people per year in London die prematurely due partly to long-term exposure to dangerous airborne particles. We therefore need early action in London to improve air quality. Unfortunately, it seems the only language the Mayor and the Government understand is the escalation of legal action and the ever closer prospect of unlimited lump sum and daily fines. There is a real need therefore to escalate current legal action quickly rather than wait over two years to restart the legal process when ratified data for 2011 becomes available in September 2012.

2. Government is hiding information relevant to the Commission’s infraction action on PM₁₀

The Government is hiding information which it admits may be relevant to the Commission’s infraction action against the UK over breaches of the limit value(s) for PM₁₀.

CCAL submitted a request to the Government on 22 January 2009 under the Freedom of Information Act/Environmental Information Regulations. This request sought, *inter alia*, details of briefing

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materials prepared by the Department for Environment Food and Rural Affairs (Defra) for Lord Hunt, the then Air Quality minister, ahead of a meeting later that day with Mayor Johnson.

Defra refused to release any of those papers and missed a number of deadlines in doing so. CCAL then appealed to the Information Commissioner’s Office which – with exceptional urgency because of the issues at stake (i.e. public health and ongoing infraction action) – ruled that Defra must release all the information requested. Defra refused to do so and lodged an appeal with the Information Tribunal. Having seen CCAL’s witness statement – which highlighted the public interest case for releasing the hidden information – Defra released two ministerial briefing papers but with several sections hidden (i.e. redacted or blacked out) and some other documents.

On 12 May 2010, the Information Tribunal ruled that Defra could not, belatedly, seek to rely on litigation privilege (i.e. Defra is concerned the release of the hidden information could weaken its defense against infraction action by the Commission on PM₁₀) to justify redacting information. Defra’s legal counsel admitted, in public session, that without such protection it ‘did not have much of a case left’ and would apply to appeal the ruling. Again taking the maximum amount possible to appeal, Defra has recently lodged an application to appeal the Information Tribunal’s ruling. CCAL is waiting to hear the result of that application.

CCAL attaches those ministerial briefing papers and urges the Commission to insist on seeing the redacted information (Exhibit 5). CCAL also attaches two Campaign Updates it published on this case dated 28 April and 11 May 2010 (Exhibits 6 and 7). CCAL plans to update the Commission on its progress with this important FOI/EIR case.

In CCAL’s view, the Government has spent nearly 17 months resisting CCAL’s request for information in the hope the Commission would grant a time extension on PM₁₀ before seeing it. This is a shocking case of cynical obstruction and delay by the Government and CCAL is dismayed the new (Coalition) Government is continuing down this path. What is the Government hiding?

3. It is ‘highly likely’ the daily limit value for PM₁₀ will be breached in London in 2011

In CCAL’s carefully considered view, it is highly likely the daily limit value for PM₁₀ will be breached in London in 2010 and 2011 (and probably thereafter). As you know, a key requirement of Article 22 is that a Member State ‘shall demonstrate how conformity will be achieved with the limit values by the deadline before the new deadline’. Commission guidance similarly requires that predictions of how PM₁₀ levels are likely to decline are ‘*realistic and reliable*’. The Government’s statement that it ‘expects compliance’ is feeble and flies in the face of overwhelmingly evidence to the contrary and does not therefore pass the rigorous test required by the Directive (and the Commission).

CCAL submits, *inter alia*, the following evidence in support of its assessment of non-compliance with the daily limit value for PM₁₀ throughout London in 2011:

- i. the second TEN for PM₁₀ is misleading in that it implies the monitoring site at Marylebone Road is the worst in London. In fact, the Marylebone Road site is only the worst site within

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the Government’s national monitoring network. Higher concentrations of PM₁₀ are regularly measured in London by the excellent London Air Quality Network (LAQN) (see Exhibit 8 and www.londonair.org.uk). Marylebone Road is not therefore the worst site monitored in London. This did not matter for the Commission’s assessment of the first TEN for PM₁₀ since the substance of that TEN did not need to be considered by the Commission (since it did not meet the minimum requirements for a time extension). It does matter this time, assuming the Commission decides to consider the substance of the TEN. The second TEN asserts but fails to demonstrate (at all) that the Government’s predicted decline in PM₁₀ levels are ‘*realistic and reliable*’ or that the daily limit value for PM₁₀ will be achieved throughout London in 2011;

- ii. daily limit value for PM₁₀ is about to be breached in London for the whole of 2010 and it is not even the end of June! Please see the relevant page of the excellent London Air Quality Network:

http://www.londonair.org.uk/london/asp/publicstats.asp?statyear=2010&mapview=PM10b®ion=0&site=CT8&postcode=&la_id=&objective=All

Other sites are likely to follow in coming weeks (e.g. those highlighted on the same map in brown).

As you will be aware, the Commission has issued clear guidance as to how it will calculate compliance with the daily limit value for PM₁₀ in 2011. This is set out in 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’ in paragraph 20 on page 6. See:

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

Paragraph 20 states:

“For 2011, compliance with the annual limit values for PM₁₀ will be assessed against the limit value plus the margin of tolerance for the whole calendar year. As regards the daily limit values, compliance for 2011 will be assessed on a daily basis. More precisely, the total number of exceedances, whether of the limit value plus the margin of tolerance or of the limit value alone, may not exceed the 35 days permitted for that calendar year.”

Given: the daily limit value for PM₁₀ is being breached around the middle of 2010; the limit value must be met in effect from 1 January 2011 even if a time extension is obtained; and there are no new measures proposed by the Government in its second TEN for PM₁₀ it is highly implausible to suggest, as the Government is doing (to support its chances of obtaining a time extension), that the daily limit value for PM₁₀ will be met in London in 2011;

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- iii. there has been a clear disparity in London between estimated trends in emissions and observed trends in concentrations. Excellent work done by Kings College London and the Institute of Transport Studies showed for PM₁₀ the average of seven central/inner London sites decreased by 4% to 5% compared with an estimated 25% from detailed emission calculations between 2003 and 2008. CCAL understands the Government’s second TEN for PM₁₀ is based on 2009 emission factors which are widely regarded within the UK air quality community as being not ‘fit for purpose’. The Government seems to recognise its projections of falling PM₁₀ emissions are wrong but despite this it is choosing to use them to support its second TEN for PM₁₀. Instead, the Government should admit its emission factors are wrong and assume little or no reduction in harmful concentrations arising from fleet turnover as the evidence has shown; and/or
- iv. letters to the Government from Camden (Exhibit 1) and the City of London Corporation (Exhibit 2), two of the most highly respected inner London local authorities, which support CCAL’s assessment that the daily limit value for PM₁₀ will not be met throughout London in 2011. Please note that these letters, dated 6 January and 22 February 2010 respectively and obtained by CCAL from Defra under the FOI/EIR rules, were sent after those local authorities had seen and commented on the first draft of the Mayor’s Air Quality Strategy (AQS) (which the Commission considered last year). There is no significant difference between that draft and the one currently open for public consultation or the second TEN for PM₁₀ (except the second TEN for PM₁₀ wrongly still includes the WEZ).

CCAL commends these local authorities highly for their integrity and exemplary sense of public responsibility in sending those letters to the Government.

Please therefore reject the second TEN for PM₁₀ for failing to meet the minimum requirements for a time extension.

4. Government’s second TEN for PM₁₀ is misleading because, while correctly excluding LEZ3 and the Mayor’s draft Air Quality Strategy, it wrongly includes the WEZ

As you are aware, the Mayor: suspended LEZ3 on 4 February 2009 just eight days after the UK had included this measure in its the public consultation for its first TEN for PM₁₀; and six days after the Commission sent the UK a first written warning on PM₁₀. The Mayor had already announced his intention to remove the WEZ on 27 November 2008.

It is wrong (and totally illogical) for the Government to: exclude LEZ3 (a planned measure that is currently being consulted upon); and include the WEZ (a measure that has been successfully in operation since February 2007 and which the Mayor has stated categorically he will remove (i.e. he has prejudged a currently ongoing legal consultation process)) in its second TEN for PM₁₀.

Further, the WEZ is an important measure to protect air quality in west London and the Mayor’s own consultation documents produced for Transport for London show that, if the WEZ is removed, the daily limit value for PM₁₀ is due to be breached along streets carrying some of the highest pedestrian traffic in London (Exhibit 3). This situation is described further below.

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Please reject the second TEN for PM₁₀ for failing to meet the minimum requirements for a time extension.

5. LEZ3 is important

The Mayor was wrong to postpone LEZ3 which was intended to protect over 15% of those worst effected by poor air quality in London. See Annex A on page 45 of the attached report:

<http://www.tfl.gov.uk/assets/downloads/roadusers/lez/lez-supplementary-information-november2006.pdf>

However, given the Mayor has postponed it, the Government was right to exclude it from its second TEN for PM₁₀.

On 17 May 2010 (i.e. two weeks after Defra’s second TEN for PM₁₀ was lodged), the Mayor launched a statutory consultation on his proposal to postpone LEZ3 from 4 October 2010 to 3 January 2012. Details of the consultation, which closes on 28 June 2010, can be seen at:

<http://www.tfl.gov.uk/roadusers/lez/about/6573.aspx>

CCAL expects to send you a copy of its formal response to that consultation before 28 June.

6. The WEZ is important

The WEZ area is important in addressing poor air quality because it includes some of the busiest roads in west London (e.g. Brompton Road, Cromwell Road and Knightsbridge). Brompton Road, for example, includes: one of the UK’s most popular tourist destinations (i.e. Harrods) which generates exceptionally high pedestrian traffic; street canyons; and some of the most polluted air in the UK. For example, mean concentrations of NO₂ so far in 2010 in Brompton Road have been about 95 micrograms per cubic metre (µg/m³) compared to 98 µg/m³ in Marylebone Road. Crucially, in CCAL’s view, limit values for PM₁₀ and/or NO₂ which have been attained between Cromwell Road and Brompton Road since the WEZ was introduced and/or will be attained in 2010 will be exceeded if the WEZ is removed as Mayor Johnson intends. Please see below for further details.

On 24 May 2010 (i.e. three weeks after Defra’s reapplication on PM₁₀ was lodged), the Mayor launched a statutory consultation on his proposal to remove the WEZ from 4 January 2011. Details of the consultation, which closes on 2 August 2010, can be seen at:

<http://www.tfl.gov.uk/roadusers/congestioncharging/15520.aspx>

The Mayor’s supporting documents can be seen at:

<http://www.tfl.gov.uk/roadusers/congestioncharging/15522.aspx>

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CCAL expects to send you a copy of its formal response to that consultation before 2 August.

Reasons why the Mayor’s removal of the WEZ is important when considering the second TEN for PM₁₀ include:

i. Breaches of the daily limit value for PM₁₀ occur there

CCAL wrote to the Government in response to its consultation on the draft Air Quality Standards Regulations 2010 on 28 January 2010. In that letter, CCAL showed (on page 10 of Exhibit 9) in a section titled ‘Limit values must be attained and not exceeded once attained’ there were between 46 and 53 exceedances for the daily limit value for PM₁₀ at the LAQN monitoring site for Brompton Road in 2009 (which measures only NO₂ but for which a standard formula exists for conversion to annual mean PM₁₀ and then daily exceedances).

ii. Government has highlighted the importance of the WEZ

As a result of an FOI/EIR request, CCAL obtained a letter dated 15 October 2008 (Exhibit 10) (i.e. shortly before 27 November 2008 when the Mayor announced he planned to remove the WEZ) from Lord Hunt, the then Air Quality Minister, to Mayor Johnson in which he said:

“The recent consultation on the Congestion Charge Western Extension is clearly important to safeguarding improvements in air quality as well as carbon reduction in London. There have been real benefits reported by Transport for London following the introduction of the Western Extension, including an estimate reduction in PM₁₀ emissions of 4.2% in oxides of nitrogen emissions of 2.5%, and in CO₂ by 6.5%. The Transport for London impact summary for the consultation highlights the negative consequences for air quality arising from the removal of the Western Extension or the introduction of a charge free period. The actions to date have brought London both European and international recognition for the scale of its efforts and I would urge you to keep the air quality gains the Congestion Charge and other initiatives have delivered.”

As CCAL has explained in its Campaign Updates about its FOI/EIR case it seems the Mayor or his team ‘downplayed’ the benefits of the WEZ to the Government after he had taken the decision to remove it. Further, it seems the Government and the Mayor subsequently decided to: let each other pursue their own air quality policies; and avoid a public row over who was most to blame for poor air quality. It seems for these reasons, the Government has surprisingly dropped references to the WEZ in subsequent communications including those sent to the Commission.

iii. Mayor has shown the importance of the WEZ

A detailed impact study published with the Mayor’s draft Transport Strategy (page 20 of Exhibit 11) stated that harmful emissions of each of PM₁₀ and NO_x were expected to rise by some 4% to 8% across the WEZ area if it is removed.

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The consultation documents published as part of the final consultation for the removal of the WEZ now indicate a minimum increase in emissions of PM₁₀ if the WEZ is removed of 3 to 4%. An upper estimate is no longer provided. See Table 4-2 of Exhibit 12.

Further, the Mayor’s various consultation documents have included estimates that if the WEZ is removed: some 30,000 extra vehicles per day would enter the area; congestion would increase by up to 21% (and be worse than before it was introduced because road capacity in the area has reduced); and some £55 million of net income per year would be lost (impacting inevitably on the availability of resources for other transport measures).

iv. Mayor’s consultation document makes clear it will take years for offsetting measures to mitigate fully its removal

The Integrated Impact Assessment (Exhibit 13) states in paragraph 7.4.17 on page 58: ‘Over time, a range of measures will deliver emission reductions in the Western Extension area commensurate with those that the WEZ would have brought, for example the planned introduction of the age-limit for taxis, and the deployment of cleaner buses’. Please note that the two mitigation measures referred to are still being consulted upon in the Mayor’s draft Air Quality Strategy and are not due to enter into force or have a significant impact on air quality in London until 2012 or perhaps 2015.

v. Government has misunderstood the impact of the removal of the WEZ

The Government has told CCAL in an email dated 2 June 2010:

“The single most important feature which determines the concentrations of PM₁₀ alongside individual road links is the traffic which that road link carries (speed, volume and composition). The WEZ could thus have a material impact on our ability to demonstrate compliance in 2011 if it were to impact on the traffic along the road links with highest concentrations of PM₁₀ or if its removal revealed road links which had otherwise been deemed to be in compliance with the limit value, i.e. revealed new hot spot locations. [CCAL emphasis added.]

“Of the 15 road links with the highest predicted annual average concentrations of PM₁₀ in London, six are along the Marylebone Road/Euston Road – the northern boundary of the WEZ and Central Charging Zone (CCZ) - four are along the “free passage route” running between the WEZ and CCZ, and the remaining five are either within the CCZ or to the east of the CCZ. Evidence from extensive TfL traffic count data shows that the WEZ had no significant impact on the traffic volume, speed or composition along any of these road links. It is therefore reasonable to conclude that the presence or absence of the WEZ makes no material difference to the predicted concentrations of PM₁₀ along these links and so is not relevant to the predicted compliance date for the PM₁₀ limit value. Furthermore, none of the road links within the WEZ have been shown to have a higher concentration of PM₁₀ than those listed above before the WEZ was initiated. It would be unreasonable to assume that the removal of the WEZ increases emissions along links within its boundaries to levels quite significantly above those seen before its initiation – none of the roads in the WEZ area carry the level of traffic seen on the Marylebone

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Road, for example. It is therefore reasonable to conclude that the removal of the WEZ does not reveal any unforeseen hotspots with regard to PM₁₀.”

In CCAL’s carefully considered view:

- a. the removal of the WEZ is highly likely to exacerbate existing problems and create one or more ‘hotspots’, of the sort characterised by Defra in that email, in that area (e.g. in Brompton Road);
- b. the impact of the removal of the WEZ on Defra’s existing hotspots is irrelevant to the consideration of the area covered by the WEZ itself (since they are outside the WEZ area);
- c. the proper test is not as Defra suggests ‘[whether] the removal of the WEZ increases emissions along links within its boundaries to levels quite significantly above those seen before its initiation’ but rather whether concentrations would exceed the daily limit value for PM₁₀ if it were removed; and/or
- d. nor is the proper test ‘[do any] of the roads in the WEZ area carry the level of traffic seen on the Marylebone Road, for example’. Unlike Marylebone Road, Brompton Road for example includes a true ‘street canyon’ – within the definition used by the Commission – and so any increase in traffic volumes and/or congestion will have a disproportionately negative impact on concentrations of harmful air pollutants.

It is clear the Government and the Mayor seem determined to ignore inevitable breaches of the limit values and the serious negative impact of removing the WEZ on those living, working or visiting west London. Their position is not rational or sustainable when all the evidence is considered.

7. Contributions from natural sources e.g. sea salt

Article 20 of the Directive states: ‘The Commission shall publish by 11 June 2010 guidelines for demonstration and subtraction of exceedances attributable to natural sources’.

The Commission does not seem yet to have published those guidelines but CCAL urges the Commission to require the UK to amend its second TEN for PM₁₀ to comply fully with them when they are published. The UK’s reapplication asserts that the number of exceedances expected at Marylebone Road in 2011 will drop from 43 to 32 if sea salt is removed. This defies practical experience in London since the daily limit value for PM₁₀ is almost only ever breached: in central London; and when the air is still over London for several days.

Please insist that the UK demonstrates applicability and if demonstrated successfully then recalculates the number of its expected exceedances using fully the Commission’s recommended methodology. CCAL considers it highly likely this will show breaches in London in 2011.

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8. The Mayor’s draft Air Quality Strategy is full of ‘wishful thinking’ and is still not ‘fit for purpose’

On 28 March 2010, the Mayor launched a public consultation on his draft Air Quality Strategy. Details of the consultation, which closes on 23 July 2010, can be seen at:

<http://www.london.gov.uk/consultation/air-quality>

CCAL expects to send you a copy of its formal response to that consultation before 23 July.

It is already clear though the Mayor’s current draft Air Quality Strategy is no better than the first draft version published last Autumn. Worse, it remains woefully full of ‘wishful thinking’ rather meaningful measures to improve air quality throughout London.

The Government is correct not to include measures from the Mayor’s draft Air Quality Strategy in its second TEN for PM₁₀, not least because the Mayor has consistently backtracked even on successful measures already working (e.g. the WEZ) or planned (e.g. LEZ3). However, even if the Mayor’s Air Quality Strategy was formally adopted, measures included in it would not fully mitigate the removal of the WEZ for some years (as noted earlier).

CCAL notes also that key objections to the UK’s first TEN for PM₁₀ still apply namely the UK’s failure to comply with the other pre-conditions in Article 22 of the Directive. See Exhibit 14.

CCAL urges the Commission to reject this application, *inter alia*, for any or all of the above reasons.

Breach of annual mean limit value for PM₁₀ in London in 2009

You will be aware that the UK has been judged by the Commission to have attained the annual mean limit value for PM₁₀ throughout the UK including London. The UK must ensure that this limit value is not subsequently exceeded. CCAL wishes therefore to draw to your attention that the consultation document on the Mayor’s draft Air Quality Strategy published on 28 March 2010 admits on page 24 that the annual limit value for PM₁₀ was breached in London in 2009. See:

<http://www.london.gov.uk/sites/default/files/draftairqualitystrategy.pdf>

and the LAQN results for Lambeth - Bondway Interchange:

<http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&bulletin=&site=LB5&postcode=&statyear=2009&mapview=PM10a&objective=All>

Such an exceedance would be a clear breach of the requirement in the Directive that limit values once attained may not be exceeded.

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

Other

CCAL brings to your attention the following further matters:

- the UK failed to transpose the Directive into UK law by the deadline of 11 June 2010. As far as CCAL is aware, the Air Quality Standards Regulations 2010 (which are the main vehicle intended to transpose the Directive) have still not been adopted formally.
- the new Coalition Government has made a poor start on air quality. The Coalition Agreement says:

‘We will work towards full compliance with European Standards of air quality’.

http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

This is a disappointing weakening of the Liberal Democrat manifesto commitment which said:

‘We will aim to fully meet European air quality targets by 2012’.

http://network.libdems.org.uk/manifesto2010/libdem_manifesto_2010.pdf

CCAL may send you further information relevant to the Commission’s consideration of the UK’s second TEN for PM₁₀ around the following dates:

- by 28 June 2010 - The Mayor of London’s consultation on his proposal to defer Phase 3 of the London low emission zone (LEZ3) from 4 October 2010 to 3 January 2012;
- by 23 July 2010 – The Mayor of London’s draft Air Quality Strategy (draft AQS);
- by 2 August 2010 – The Mayor of London’s consultation on his proposal to remove the western extension of the congestion charging zone (WEZ); and/or
- at any time in relation to the FOI/EIR appeal e.g. if the redacted information is released.

CCAL is pleased to invite Commissioner Potočník to London on a fact finding visit to assess, at first hand, the poor state of air quality in London and the negative impact of air quality policies currently being pursued here.

On behalf of CCAL, I would like to take this opportunity to thank you and your team for the work you are doing to improve air quality in London. CCAL is asking you to consider carefully but not reply to this letter since we would rather the Commission’s resources are directed at pressing the UK to improve air quality than in responding directly to CCAL.

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Please contact me if you have any questions or would like more information on any of the points raised in this letter.

With best wishes.

Yours sincerely

Simon Birkett
Founder
Campaign for Clean Air in London