

The Rt. Hon. Caroline Spelman MP
c/o Atmosphere and Local Environment Programme
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Sent by email: EUAirQuality@defra.gsi.gov.uk

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Dear Secretary of State

Failure to consult on air quality plans by 30 November 2011 negates London's time extension to comply with legal limits for dangerous airborne particles (PM₁₀). 'Clean Air in London' (CAL) urges the European Commission to launch infraction action now

Monitoring data for 2011 shows Neasden Lane breached the PM₁₀ daily limit value in 2011 and 'changed the status' of the London 'zone' even if a time extension was obtained

CAL has no confidence in the updated air quality plan for London. Mayor Johnson has already failed to make good on commitments made in the plan

Olympic Games represents a crunch point for air quality in London. Stronger, better plans are needed urgently to protect public health and ensure full compliance with PM₁₀ air quality laws

I am writing on behalf of Clean Air in London (CAL) to respond to your 'Consultation on an update on measures being taken to reduce the risk of non-compliance with the daily limit value for particulate matter in London' which closes on 6 January 2011 (the Consultation). Thank you for the opportunity to do so. Details can be seen at:

<http://www.defra.gov.uk/consult/2011/10/12/particulate-matter-pm10/>

Details of CAL's mission and a list of its supporters can be found at www.cleanairinlondon.org.

Summary

CAL believes the reasons given for this Consultation taking place are misleading. The consultation is necessary because the UK Government has a legal duty to consult publically on air quality plans.

The failure to consult prior to the plan's submission to the European Commission invalidates the UK's submission. The UK Government has yet to submit a plan that has undergone public consultation. It has missed therefore the deadline of 30 November 2011 to satisfy the European Commission's temporary and conditional time exemption for meeting the PM₁₀ daily limit value in London.

In view of this unlawfully missed deadline, the UK's time extension, 'granted' by the Commission in June 2011, should be 'negated'. The Commission should conduct an urgent investigation into the

UK's plans for air quality in London and launch infraction action for the UK's failure to comply with the PM₁₀ daily limit value since 2005.

Monitoring data from the London Air Quality Network confirms that it is no longer appropriate to use the Marylebone Road monitoring site as the sole site to establish the highest number of exceedances of the PM₁₀ daily limit value in London. Exceedances recorded at the London Air Quality Network's Neasden Road site were much higher in 2011 than those at Marylebone Road. CAL believes this data changes the status of the London 'zone' even if a time extension was lawfully obtained which it was not.

CAL has no confidence that the measures outlined in the Consultation will ensure sustained compliance with the PM₁₀ daily limit value in London. There is insufficient evidence that many of the measures will deliver significant improvement, whilst some other measures merely limit the damage to air quality inflicted by other policy decisions (for example encouraging biomass combustion in London).

Finally, it is clear the plan has not been implemented either in full or on time. Measures to encourage cleaner taxis have already slipped, whilst the Mayor's previous delay in implementing Phase 3 of the London low emission zone (LEZ) show he is inclined to take backward steps on life-saving air quality measures and prioritise randomly other policies.

2012 will see London face an unprecedented air quality challenge as the city hosts the Olympic Games. With the current weak air quality plans the city is highly likely to be faced with either breaking air quality standards set to protect public health or taking drastic remedial action in the lead up to the Games. Stronger plans for compliance with air quality laws are needed urgently.

Detailed comments on the Consultation

It is crucial that documentation accompanying consultations provides adequate background, including details of why the consultation is taking place. This Consultation fails to do so. The Consultation Letter states 'In response to interest from stakeholders we are writing now to invite views on this [air quality plan for London]'. This statement omits the legal background and seems likely to mislead respondents not well versed in the background to this Consultation.

On 11 March 2011 the European Commission granted the UK a [temporary, conditional time extension](#) to comply with the PM₁₀ daily limit value in London. The time extension was conditional *inter alia* on the UK adjusting the air quality plan for London 'to include short-term measures effective for controlling or, where necessary, suspending activities which contribute to the risk of the limit values being exceeded'. The revised plan needed to be in place by 11 June 2011 and be submitted to the European Commission by 30 November 2011 at the latest.

In June 2011 the UK Government submitted an updated plan to the European Commission. However, there was no public consultation on this revised plan prior to its submission. The Government has a legal duty to consult on air quality plans and, following repeated reminders and a Judicial Review brought by leading environmental NGO ClientEarth, the Government belatedly launched the current Consultation. Public consultation on the plan is a legal duty: it is not simply 'in response to interest from stakeholders' as the Consultation Letter suggests.

CAL believes that the legal duty to consult on the revised plan invalidates the revised air quality plan

submitted to the European Commission in June 2011. Submission of the final plan can only take place once the Consultation has closed and comments from respondents properly considered and incorporated. The UK has therefore missed the 30 November 2011 deadline for submitting a revised plan and so the time extension for London should be ‘negated’. The European Commission should now launch infraction action against the UK for non-compliance since 2005.

Breach of PM₁₀ daily limit value in any event at Neasden Lane

Even if a time extension was obtained lawfully, the UK was required to ensure no breaches of the ‘adjusted’ PM₁₀ daily limit value in 2011 (i.e. daily limit value plus margin of tolerance before 11 June and daily limit value for the rest of 2011) and no further breaches of the daily limit value in 2012 or thereafter. The former is now a question of fact. For the latter, it is necessary to have confidence that the measures in the plan are sufficient to show that:

- exceedances recorded during 2011 are at a level where measures in the plan could credibly reduce them to below the maximum number permitted during 2012; and
- the greatest number of exceedances of the daily limit value are still likely to occur at the Government’s selected monitoring site (Marylebone Road), and not at other locations in London.

The evidence shows the air quality plan is not robust in any of the necessary respects.

The table below shows monitoring data from four sites of the London Air Quality Network taken from the excellent [London Air Quality Network](#). The number of exceedances of the PM₁₀ daily limit value at each site are shown for the calendar year of 2011 on both bases i.e. with and without a lawful time extension. The Marylebone Road site is highlighted as this is the Government’s selected site used for reporting exceedances to the European Commission.

Site	Number of Exceedances of Daily Limit Value for PM ₁₀			
	Over 75 µg/m ³ =<11/6/11	Over 50 µg/m ³ >11/6/11	Total 2011 (with TE)	Total 2011 (without TE)
Brent – Ikea	4	20	24	42
Brent – Neasden Lane	8	31	39	77
City of London – Upper Thames Street	4	27	31	53
<i>Westminster – Marylebone Road FDMS</i>	<i>10</i>	<i>16</i>	<i>26</i>	<i>57</i>

This monitoring data confirms:

- first, that London breached the PM₁₀ daily limit value in Neasden Lane even if the UK had lawfully obtained a time extension until 2011 to comply with that limit value;
- second, that the monitoring site at Marylebone Road is unlikely to be the site that will experience the highest number of exceedances of the PM₁₀ daily limit value given other sites recorded a significantly higher number of exceedances; and
- third, the PM₁₀ daily limit value is highly likely to be breached in London even with the air quality plan in place. A trajectory whereby 77 exceedances fall below (and stay below) 35

(and/or the annual mean falls from 38 $\mu\text{g}/\text{m}^3$ to 31.5 $\mu\text{g}/\text{m}^3$ after deducting sea salt) in immediately following years is wholly unrealistic.

CAL believes that the monitoring results reported by the Neasden Road site have changed the status of the London 'zone' even if the time extension was lawfully obtained i.e. even if all other sites complied. The site is part of the London Air Quality Network rather than the UK 'AURN' network used to report to the European Commission. However, it has recorded significantly more exceedances of the PM₁₀ daily limit value than the Marylebone Road monitoring site since January 2011. Further, CAL understands that it meets the micro-siting and data quality criteria laid down by Directive 2008/50/EC.

Comments on measures set out in the Consultation Document

It is difficult to interpret properly the measures set out in the consultation document due to the 'scattergun' approach used to list them. In particular CAL finds that there has been no attempt to distinguish between:

- measures projected to improve air quality, with significant evidence of their likely impact;
- measures projected to improve air quality, but with little evidence of their likely impact; and
- measures that will mitigate increases in air pollution.

CAL understands there is significant evidence that the following measures are likely to reduce PM₁₀ concentrations in London:

- Phase 3 of the Low Emission Zone (although it should be noted that the Mayor delayed implementation from the original October 2010 date, thereby significantly reducing the benefits of this measure, see [CAL's response](#) to the Mayor's consultation);
- measures to mandate and support cleaner taxis; and
- revised and mandatory guidance on the control of emissions from construction and demolition.

Measures that may have a positive impact on air quality in London, but for which there is insufficient evidence of their likely impact include:

- 'dust suppressant' technology and 'green walls'. In CAL's view, there is no credible evidence yet that these technologies/measures will have a significant impact in a London setting. Existing data comes from trials elsewhere in Europe or the United States where the conditions are different;
- use of hybrid buses. There is little evidence that these have lower PM₁₀ emissions than new, standard diesel buses meeting the same Euro emission standards;
- Cycle Superhighways. Whilst CAL strongly supports efforts to encourage cycling in London, there is little evidence of the air quality improvements this is likely to produce.

Finally, measures that might mitigate increases in air pollution from other plans and programmes in London such as:

- a Euro 5 emission standard for the Congestion Charge 'Greener Vehicles Discount'. The overall impact of the Greener Vehicles Discount will be to increase traffic and congestion in

central London, which will have a negative impact on air quality (see views from [Environmental Protection UK](#)). It will also neutralise the impact of congestion charge exemptions for electric vehicles - cheaper non-electric vehicles will receive the same exemptions. The Greener Vehicles Discount needs to be reviewed generally and revoked for all diesel vehicles; and

- biomass boiler emission standards. Biomass boilers that meet the Mayor's proposed standards still have significantly higher emissions of PM₁₀ than the natural gas fired boilers that they will replace. The Government's plans to encourage biomass burning need to be reviewed to ensure biomass is deployed only where air quality is good.

CAL is concerned that a key thread of the plan involves targeted action on small 'hotspot' locations which is inconsistent with the need to maintain compliance with the PM₁₀ daily limit value across London. As the monitoring data on page 3 of this letter demonstrates, air pollution 'hotspots' across the city change in time and location due to changes in land use and traffic composition and flows. A narrow focus on 'hotspots' will inevitably fail as new non-compliant areas 'bubble up' at fresh locations or at different times across London. In any event, CAL considers it a gross breach of 'trust' to use 'dust suppressants' in front of official air quality monitoring stations.

It is of course a requirement that any measures outlined in the plan are actually deployed in practice, and the European Commission must be confident that the UK Government and the Mayor of London will 'deliver on the plan'. With that in mind there are already worrying signs of delays and further 'backward steps'. For example, we note that the Consultation Document states that the Mayor 'has announced a financial incentive scheme to encourage drivers to purchase the cleanest available taxis. This will be established by the end of 2011'. We are now in 2012 and this scheme has yet to be launched.

The delay in implementing LEZ Phase 3 sets a worrying precedent that the current Mayor is willing to take backward steps on air quality measures, required to meet the UK's air quality legal responsibilities, if he feels other issues are pressing. With London facing a difficult economic year and the forthcoming Olympic Games, CAL has no confidence the Mayor will implement fully the current air quality plan and/or take all actions needed in order to ensure full compliance with the PM₁₀ daily limit value.

Urgent action needed by the European Commission

In this letter CAL has explained why:

- the UK's air quality plan submitted to the European Commission in June is invalid due to the failure of the UK Government to consult on the plan prior to its submission. The UK therefore missed the 30 November 2011 deadline for submitting a plan and the time extension for the London 'zone' should be 'negated';
- even if a time extension was obtained lawfully, the PM₁₀ daily limit value was breached in Neasden Lane in 2011 and/or the status of the London 'zone' changed; and
- it is highly likely the UK's air quality plans for the London 'zone' will fail to achieve compliance with the PM₁₀ daily limit value in 2012 and thereafter.

In view of these three points, CAL urges the European Commission to make a detailed investigation of the UK's plans for achieving the PM₁₀ daily limit value in London and launch infraction action.



Only by doing so will the 'free-riding' UK take the necessary and sustained action to protect public health.

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 and Director
Clean Air in London

Cc:

Commissioner Janez Potočnik
Boris Johnson, Mayor of London
James Cleverly AM
Darren Johnson AM
Murad Qureshi AM
Mike Tuffrey AM