

19 March 2012

‘Clean Air in London’ (CAL) calls for Caroline Spelman MP to be held accountable and resign for the UK misleading the European Commission (Commission) over its Plans and Programmes for nitrogen dioxide (NO₂) and other serious public health failings

Commission will be asking the UK authorities to comment on CAL’s claim that the UK unlawfully obtained a time extension until 2011 to comply with the PM₁₀ daily limit value in London because the public was not consulted on time on the updated air quality plan

UK set to be fast-tracked to the Court of Justice of the European Union if breaches of PM₁₀ air quality laws are confirmed in London i.e. just two steps short of £300m per annum fines

Three cheers for Jean Lambert MEP, Keith Taylor MEP, Darren Johnson AM, Jenny Jones AM, Caroline Lucas MP and the Green Party for their effective teamwork and action to protect public health. We now need others to act urgently

Clean Air in London (CAL) lodged a formal complaint in two parts with the European Commission (Commission) on 15 January 2012 over the UK’s failure to comply with air quality laws in London and elsewhere (the Complaint). Details can be seen at:

<http://cleanairinlondon.org/legal/clean-air-in-london-lodges-complaint-over-breaches-of-air-pollution-laws-in-london/>

Jean Lambert and Keith Taylor, Green Party MEPs for London and the South East of England, wrote to Commissioner Potočnik, European Commissioner for the Environment, in support of CAL’s Complaint and have now received a formal response. In a letter to Jean Lambert dated 12 March 2012 (attached), Commissioner Potočnik makes clear the Commission is actively investigating CAL’s Complaint and more particularly:

- i. Complaint fast-tracked: the Commission is considering the Complaint under a European Union (EU) pilot process that is intended to deliver a decision within 10 weeks. With the Complaint lodged on 15 January and receiving an official acknowledgement on 9 February, CAL hopes to receive an official response before the Mayoral election. Normally, these complaints would take much longer to achieve a response.
- ii. PM₁₀ Part one: the Commission has confirmed it will be asking the UK authorities to comment on CAL’s claim that the UK unlawfully obtained a time extension until 2011 to comply with the PM₁₀ daily limit value in London because the public was not consulted on time on the updated air quality plan.
- iii. PM₁₀ Part two: the Commission should be in a position shortly after 30 September 2012 to properly verify whether, if the UK’s time extension for the PM₁₀ daily limit value in London is sustained, the UK breached that time extension in Neasden Lane in 2011. An analysis by CAL of provisional data on the excellent London Air Quality Network showed that PM₁₀ levels exceeded the limit value plus margin of tolerance in Neasden Lane, Brent in 2011. Neasden Lane has already had 24 of the 35 Bad Air Days allowed in 2012 when no margin of tolerance is applicable or time extension allowed. A legal breach in Neasden Lane would trigger the need for a further air quality plan.

- iv. NO₂ Part one and two: the Commission accepted the Plans and Programmes submitted by the UK in September 2011 to achieve compliance with EU limit values for nitrogen dioxide (NO₂) under Article 22 of Directive 2008/50/EC for ambient air quality and cleaner air for Europe. Article 22 relates to applications for time extensions until 2015 to comply with NO₂ limit values. CAL asserted, following the Government's admissions in Client Earth's ground breaking High Court case on 13 December 2011, the UK had not applied for a time extension for London and 16 of 42 other UK zones – choosing instead to argue the Government was: submitting Plans and Programmes under Article 23 of the Directive; and further that it was not subject to any deadline. The Transcript of that Judgement is attached.

[CAL 174 Transcript of ClientEarth High Court 1312SC01](#)

- v. NO₂ Part two: The Commission is verifying whether it was correct to assess all notifications received from the UK, including the one covering London, in accordance with Article 22. This is the first confirmation that the UK succeeded in misleading the Commission as CAL asserted it was doing in its Complaint.

Commissioner Potočník kindly also confirmed he would update Jean Lambert when the Commission has further information and clarification from the UK.

CAL understands the Commission told BBC Politics Sunday (shown on 18 March 2012) that:

- vi. The UK has adopted an air quality plan for London outlining measures which projected compliance with the daily PM₁₀ limit value by June 2011. On that basis, the Commission, in accordance with EU law, granted the UK an exemption from the obligation to respect PM₁₀ standards in London (and Gibraltar) until June 2011. **The infringement procedure was in the meantime put on hold pending the receipt of the 2011 data confirming compliance.** The Commission has not yet received the official data for the year 2011.
- vii. With regard to the Neasden Lane measuring station: the Commission verifies compliance with the limit values once the Member State has provided the annual air quality report for 2011; the UK is due to provide this by 30 September 2012 at the latest. For the benefit of citizens, the Commission **encourages Member States to provide them with this data as soon as it is available, allowing for major problems to be identified earlier and to respond more effectively to them.** This is in line with the approach the Commission advocates in its communication of 7 March 2012 for better implementation of EU environmental law and for preventing the costs of non-implementation of such law.
- viii. The Commission expects that Member States will report information on the state of ambient air quality which reflects the ~~real~~ situation over the whole air quality zone, in line with the assessment criteria laid out in the EU ambient air quality law. **CAL emphasis.**

The Government told BBC Politics Sunday (shown on 18 March 2012) that:

- ix. The UK Government may not have completed the review of its air quality monitoring network, which was required in 2011 under Article 5 of Directive 2008/50/EC, by 30 September 2012 when it is required to report official results for 2011 to the Commission. This means that it may not report the 2011 results from the Neasden Lane monitor even if

those results would change the status of the whole London zone i.e. from compliance to non-compliance if a time extension for PM₁₀ is sustained.

Quotes

Simon Birkett, Founder and Director of Clean Air in London, said “It is tremendous to see Commissioner Potočnik responding vigorously to Clean Air in London’s complaint that the UK is cheating and misleading the European Commission over air quality laws in London and elsewhere.

“Commissioner Potočnik’s letter together with separate revelations from the BBC confirm:

- CAL’s complaint may receive an official response shortly before the Mayoral election;
- the UK would be fast-tracked to the Court of Justice of the European Union (CJEU) (i.e. just two steps short of £300m per annum fines for London) if it is judged by the Commission to have breached the PM₁₀ daily limit value in London in 2011 (or thereafter); and
- the UK did mislead the Commission into accepting the UK’s notifications on NO₂ as a time extension to comply with NO₂ limit values in London and elsewhere as CAL had thought.

“The UK must **stop doing bad things** and **start doing good ones** if we are to address the biggest public health crisis for decades. We need the Mayor and the Government to: stop cheating on public health laws; and start issuing smog alerts (when air pollution is expected to be MODERATE for two or more days or HIGH or VERY HIGH for one or more days) and act boldly to reduce air pollution.

“It defies belief that London had record levels of dangerous airborne particles (PM_{2.5}) (i.e. a subset of PM₁₀) last week with no smog alert from the Mayor and the Government. The Mayor is failing to control levels of PM₁₀ in London and/or NO₂, a toxic gas, which is the other main pollutant. Levels of NO₂ are higher in London than any other capital city in Europe and comparable with Beijing. Incredibly, levels of NO₂ near our busiest streets far exceed twice World Health Organisation guidelines and legal limits in legislation since 1999 to be complied with by January 2010.

“It would be **public health fraud** if the Government fails to report a breach of the PM₁₀ daily limit value in Neasden Lane in 2011 to the European Commission by September 2012. It is time to break the vicious circle of cover-ups and failings and follow the virtuous circle of public understanding and appetite for action. Only smoking causes more early deaths than long-term exposure to air pollution.

“The UK misled the Commission into thinking it was applying for a time extension to comply with NO₂ limit values in London when it was not. Its motive was clearly to delay infraction action and the need to clean up London’s air. As Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman is responsible within Government for air quality. She must be held accountable and resign for the UK misleading the Commission and other serious public health failings.

“London and the Government should be leading the world in tackling air pollution not cheating and misleading the European Commission.”

