



**Telephone:** 08459 335577

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**Date: 20 August 2012**

Dear Mr Birkett,

**Re: EU pilot 3628/12/ENVI: Complaints concerning UK compliance with the Ambient Air Quality Directive (2008/50/EC)**

Your two-part complaint to the European Commission of 15 January 2012 regarding compliance with the Ambient Air Quality Directive (2008/50/EC) has been forwarded to us by the Commission under the EU pilot scheme. Under these pilot procedures, Member States are required to respond to the complaint by addressing any questions posed by the Commission.

We have been asked by the Commission to comment on a number of points, each of which are set out below, that relate to part one of your complaint concerning compliance with the daily particulate matter (PM<sub>10</sub>) limit value in London. The Commission has also invited us to comment on part two of your complaint concerning compliance with the nitrogen dioxide (NO<sub>2</sub>) limit values in the UK.

**Part 1: PM<sub>10</sub> levels in London**

**Question 1:** In response to your complaint in relation to the Update to the Air Quality Plan for London that was sent to the Commission in June 2011 in response to their Decision of March 2011, the Commission would like to understand whether:

- the public were realistically provided with an opportunity to comment on different options for action considered in line with Article 2(2)(b) of Directive 2003/35/EC,
- how the comments provided in this belated consultation were taken into account in line with Article 2(2)(c) of Directive 2003/35/EC,
- how your authorities informed the public about the decisions taken and the reasons/considerations on which these were based under Article 2(2)(d) of Directive 2003/35/EC; and
- whether, as a result, additional changes to the plan were deemed necessary.

**Comment:** We are satisfied that in the course of development of the Air Quality Plan for London the public was given ample opportunity to comment on the options for action to achieve compliance with the daily limit value for PM<sub>10</sub> and that Defra's actions have been consistent with Directive 2003/35/EC (Articles 2(2)(b-d)). The measures included in the



2009 PM<sub>10</sub> Air Quality Plan for London and the subsequent May 2010 update and June 2011 delivery update to the Commission had been subject to extensive public consultation.

Defra consulted on the draft Air Quality Plan for London in January 2009 prior to submission of the Plan to the Commission in April that year. Your organisation CCAL submitted a response to this consultation.

In parallel with the work to develop the London Air Quality Plan to demonstrate compliance with the limit values by June 2011, the Greater London Authority (GLA) was updating the London Mayor's Air Quality Strategy. An updated Mayor's Air Quality Strategy was subject to an initial consultation with London Assembly members and functionary bodies in October 2009 and a full public consultation that ran from March to August 2010 with the final strategy published in December 2010. As part of this process, new commitments were made by the Mayor to take forward additional measures to improve air quality, including age limits for taxis, promoting low-emission vehicles such as electric cars, promoting eco-driving, new and tighter standards for the London Low Emission Zone, retrofitting older buses, using the planning system to reduce emissions from new developments and retrofitting homes and offices to make them more energy efficient, and a package of new targeted local measures for hotspot areas. Your organisation CCAL submitted a response to the Mayor's Air Quality Strategy consultation.

Commission Decision C(2011)1592 of March 2011 granted a time extension for London until June 2011 but made this contingent on the UK authorities adjusting the London plan by June 2011 to reduce the risk of exceeding the PM<sub>10</sub> daily limit value. As you are aware, this Decision was followed by an announcement in April 2011 of an additional £5m support to the Mayor of London from the Dept. for Transport - the Clean Air Fund. This was used to intensify the application of the package of local measures that had been already been consulted upon in the Mayor's Air Quality Strategy. **The update reported by the UK Government to the Commission in June 2011 therefore compiled and reported progress on additional efforts in delivering the already agreed package of local measures to reduce the risk of exceedences of the daily limit value for PM<sub>10</sub>.** The update was made publicly available on the Defra website and the Commission notified the UK in July 2011 that the update had satisfied the conditions of the time extension for London.

The subsequent public consultation on the update by Defra in October 2011 was carried out in response to interest from a very small number of stakeholders, in particular CCAL and Client Earth. The consultation made clear that responses would inform ongoing discussions with the GLA on further action to improve air quality in London. A Government response to the main issues raised by respondents to the consultation was published on the Defra website in March 2012.

Unsurprisingly, consulting on a delivery update on local measures that had previously been subject to public consultation elicited very few responses on the measures being deployed. Nevertheless, there were a few interesting ideas and these have been shared with the GLA and discussions with the GLA and the Dept. for Transport about scope for further action are ongoing. The London Air Quality Plan in relation to PM<sub>10</sub> will be updated as appropriate. As you know, the current focus on air quality plans is in relation to nitrogen dioxide limits. A final report evaluating the package of short term local measures to tackle PM<sub>10</sub> in London will be published by the GLA in late 2012.

**Question 2:** Your complaint raises concerns that in 2011 the PM<sub>10</sub> daily limit value was breached in London in Neasden Lane, Horn Lane and Upper Thames Street. Whilst the Commission would normally only be in a position to verify compliance with the Directive after receipt of the data provided by the Member State by the end September 2012, it would be of interest to the Commission to understand whether any of these monitoring stations will be included for reporting under the Directive for 2011. The Commission would like to receive comments on the allegations made that the current network of monitoring stations reported to the Commission is too restrictive and excludes the stations such as these three that show the highest monitored PM<sub>10</sub> exceedances.

**Comment:** The monitoring sites in London that are mentioned – Neasden Lane, Upper Thames Street and Horn Lane – are not currently part of the UK national compliance monitoring network (the Automatic Urban and Rural Network (AURN)) and so data from these three monitoring sites will not be included in the 2011 compliance assessment report required under the Ambient Air Quality Directive (2008/50/EC). These three stations are owned and run by local authorities for local air quality management purposes and are used to support local action to improve air quality at these sites.

**The national network is kept under review and we do not accept that the current monitoring network is overly restrictive.** In addition, the UK supplements fixed measurements with modelling to assess and report on greater spatial coverage of pollutant concentrations than would be achieved through measurement alone.

The Directive sets out requirements for the siting of sampling points for the assessment of sulphur dioxide, nitrogen dioxide, oxides of nitrogen, particulate matter, lead, benzene and carbon monoxide. Annex III of the Directive states that compliance with limit values directed at the protection of human health shall not be assessed at the following locations:

- a) Any location situated within areas where members of the public do not have access and there is no fixed habitation;
- b) on factory premises or at industrial installations to which all relevant provisions concerning health and safety at work apply;
- c) on the carriageway of roads and on the central reservations of roads except where there is normally pedestrian access to the central reservation.

Defra understands that the Neasden Lane site is located within the boundary of an industrial site and therefore is a location for which relevant provisions concerning health and safety at work apply (point b above). As set out above, air quality is not assessed at such locations for the purpose of the Directive. As you are aware, action is being taken by the relevant authorities to understand and reduce emissions in the vicinity of this site.

The Upper Thames Street site is located under a bridge and does not meet either the macro or micro-scale siting criteria in Annex III of the Directive. Specifically, the site has not been set up in a way to avoid measuring very small micro-environments in the immediate vicinity (Annex III B1(b)) and is positioned against the wall of the bridge therefore not enabling the air flow around the inlet sampling probe to be unrestricted (free in an arc of at least 270° (Annex III C).

PM<sub>10</sub> at the Horn Lane site is not monitored using EU reference method or equivalent and the measurements may not be traceable to ISO17025 as is required by the Directive. Therefore, the data from this site for 2011 would not be suitable for reporting as part of the compliance network.

Regardless of the status of these monitoring sites, the local authority, the GLA and the Environment Agency are (in line with local air quality management provisions under the Environment Act 1995) taking measures to reduce emissions in these areas (and other local authority sites around the country) to improve air quality for local residents and to protect human health. The measures being taken do not change depending on the status of a monitoring site.

**Question 3:** The Commission would like to ask for comments on the allegations that the authorities are concentrating dust suppressant activities in areas just in front of key monitoring stations with the implied aim of reducing potential exceedance readings rather than having regard to improving air quality more generally.

**Comment:** These allegations are entirely false and have been refuted several times.

Dust suppressants are part of a package of several different local measures set out in the Mayor's Air Quality Strategy for London. Other measures include green walls, using taxi marshals and targeting vehicle idling. These are complementary to, rather than a replacement for, strategic London-wide measures. London has Europe's largest city-wide Low Emission Zone and is one of the few European cities to combine this with a congestion charging zone. Taken as a whole, London has a comprehensive package of measures which is amongst the most ambitious of any European city.

The use of dust suppressants has formed part of the package of local pollution measures in London that is referred to above and we are aware that they are also being used in other European cities such as Stockholm. Here, they have been trialled along London's most polluted traffic corridors to control dust and particulates as a local pollution control measure and in no way do they "artificially" reduce pollution readings. In the first year of the trial (2010/11), dust suppressants were applied to two of London's most polluted road corridors because this was where PM<sub>10</sub> concentrations were highest. Along each road, the dust suppressant was applied across the width of the carriageway. Where the road was multiple lanes the spreader would do multiple runs to cover the entire carriageway. The presence of monitors at these locations allowed the impact of the dust suppressants to be assessed to determine if they were effective as a short term measure. This is a logical approach to trialling a short term targeted air quality measure.

In May 2012, the GLA published an interim report on the effectiveness of the short term measures introduced to improve air quality in London. This showed that in the first year of the trial, dust suppressants achieved up to a 14% decrease in local PM<sub>10</sub> levels in some locations; there were also no operational or safety problems observed throughout the trial. Following the success of the initial trial, the use of dust suppressants was rolled out more broadly and the measure has been used on a number of roads where there is no monitoring in place. The expanded trial is now complete and, as mentioned in our response to Question 1, a final report evaluating the package of local short term measures in London, including dust suppressants, will be published by the GLA in late 2012.

## **Part 2: Achieving compliance with NO<sub>2</sub> limit values in the UK**

**The Commission would like to draw your attention to the obligation of setting out "appropriate measures, so that the exceedance period can be kept as short as possible", as provided by Article 23 for all zones and agglomerations where an exceedance is taking place and no time extension has been requested under Article 22. The Commission reserves its right to raise further questions on this issue, depending on the expected duration of the exceedance period for each zone and agglomeration. Any comments the United Kingdom would wish to make with this regard will be noted.**

The UK Government is fully aware of its obligations in relation to air quality plans under Article 23 of Directive 2008/50/EC. The UK approach to submission of air quality plans has been subject to Judicial Review and, most recently, the Court of Appeal. The Appeal Court judgement R(on the application of ClientEarth) v Secretary of State for Environment, Food and Rural Affairs, published in May 2012, upheld the earlier judgement and concluded that the UK was not obliged to use Article 22 of the Directive by submitting plans demonstrating compliance with limits by 2015 if unable to do so.

The Court of Appeal also commented that the scheme of the Directive was not merely to penalise a Member State which found itself in breach of the limits but to enable the Member State to work together with the Commission to achieve compliance through the mechanism of air quality plans under Article 23. Commission Decision (C(2012)4155) of 25 June acknowledges those Plans for 16 zones that were submitted to the Commission in September 2011 under Article 23 of the Directive.

Air quality plans represent a snapshot in time of the measures available and our best assessment of the air quality improvements that these might deliver. Both of these will change over time. In light of this and the Commission Decision referred to above, which raised objections to a number of our plans, we will continue to explore all possible options for accelerating improvements in air quality where limits are not yet met. We look forward to dialogue with the Commission and other Member States on these issues.

A copy of this letter is being sent to the European Commission.

Yours sincerely,

HELEN AINSWORTH