

19 November 2014

Massive win for ClientEarth, on all counts, in landmark air pollution case

UK Supreme Court must require Defra, in this case, to produce a meaningful air quality plan to ensure that the exceedance period for nitrogen dioxide (NO₂) limit values beyond January 2010 is 'as short as possible'. Producing a plan is not enough in itself

Clean Air in London urges the Government and the Mayor to ban diesel exhaust from the most-polluted places as coal was banned successfully 60 years ago. This is the most important action needed to protect public health and comply with NO₂ limit values

Huge congratulations to ClientEarth

The Court of Justice of the European Union (CJEU) has published its Judgment in Case C-404/13: The Queen, on the application of ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs. Media release:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-11/cp140153en.pdf>

The Case relates to the Directive 2008/50/EC on ambient air quality and cleaner air for Europe:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

CJEU has ruled:

1. Nitrogen dioxide (NO₂) limit values are an absolute 'obligation to achieve a certain result' i.e. they must be achieved to protect public health irrespective of other factors. The postponement of the deadline to comply with NO₂ limit values is possible only where 'acute compliance problems exist'.
2. Member States may only delay compliance with NO₂ limit values beyond 1 January 2010 if they produce(d) a plan demonstrating full compliance with those limit values by no later than 1 December 2015. The UK has failed to do so for 16 of its 43 zones.
3. Citizens can bring a case before national courts.
4. National Courts must 'take any necessary measure, such as an order in the appropriate terms, so that the appropriate authority [Defra in this case], establishes the plan required by the Directive to ensure, in particular, that the period during which the limit values are exceeded is as short as possible'.
5. The mere fact that such a plan has been established does not mean the Member State concerned has entirely satisfied its obligations under the Directive. Defra's current plan shows London, Birmingham and Leeds breaching the NO₂ annual mean limit value until beyond 2030.

The final point is the most important. It means that Defra must produce a meaningful plan that keeps the exceedance of NO₂ limit values 'as short as possible'.

Quotes

Simon Birkett, Founder and Director of Clean Air in London, said:

“This is a massive win for ClientEarth on all counts in a landmark environmental case that could be the most important in a generation.

“This Judgement means early next year the Supreme Court must take any necessary measure to require Defra to produce a meaningful new Air Quality Plan that ensures the exceedance period for nitrogen dioxide (NO₂) limit values beyond 1 January 2010 is ‘as short as possible’. The Judgement also makes clear that these limit values are absolute ‘obligations’.

“Defra’s new Plan should address all five of the Healthy Air Campaign’s six Policy Calls:

1. Support for a more ambitious EU air quality package which delivers real improvements in urban air quality through strict national emissions targets
2. Develop and deliver a cross-government national air quality strategy
3. Set stricter national air quality objectives for 2030 which align with WHO guidelines;
4. Drive a dramatic decrease in the use of diesel, through a range of measures including a national network of low emission zones, and taxation targets;
5. Commit to measures to increase sustainable transport, which would reduce overall levels of motor traffic; and
6. Provide better public information on air pollution, including a comprehensive warning system for air pollution episodes and clinical advice.

“This Judgement means much more though. It gives citizens across Europe the right to bring actions on air pollution to national courts.

“It also leaves the door wide open to the European Commission to send the UK a final written warning for breaching the NO₂ limit values in 16 of 43 UK zones since 1 January 2010. This would represent the second in a five step process with the final stage involving unlimited lump and daily fines, estimated the Mayor of London as being £300 million per annum per pollutant.”

“Most important, the European Court has taken action today to protect UK citizens from the Government and the Mayor’s failure to protect us from air pollution. Huge congratulations to ClientEarth, particularly Alan Andrews and James Thornton, and barristers, Dinah Rose QC and Emma Dixon.

“Clean Air in London urges the Government and the Mayor to ban diesel exhaust from the most-polluted places as coal was banned successfully 60 years ago. This is the most important action needed to protect public health and comply with NO₂ limit values.”

Notes

1. Twitter feed

<https://twitter.com/CleanAirLondon/lists/eu-clean-air>

2. Court of Justice of the European Union

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-11/cp140153en.pdf>

<http://curia.europa.eu/juris/liste.jsf?pro=&lgrc=en&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=C-404%252F13&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=408471>

http://curia.europa.eu/jcms/jcms/Jo2_16799

http://ec.europa.eu/avservices/ebs/live.cfm?page=2&utm_source=&utm_medium=&utm_campaign=

http://curia.europa.eu/jcms/jcms/j_6/

3. ClientEarth media releases

<http://www.clientearth.org/news/press-releases/eu-court-rules-uk-government-must-act-to-clean-up-deadly-air-pollution-2699>

<http://www.clientearth.org/news/latest-news/uk-air-pollution-eu-court-judgment-due-on-19-november-2014-2695>

<http://www.clientearth.org/201409302655/news/latest-news/new-figures-for-uk-air-pollution-show-the-results-of-government-inaction-2655>

<http://www.clientearth.org/201407102598/news/latest-news/uk-will-miss-air-pollution-deadline-by-over-20-years-fails-to-suppress-information-in-eu-court-2598>

<http://www.clientearth.org/201406242584/news/latest-news/eu-court-to-rule-on-uk-air-pollution-failings-2584>

<http://www.clientearth.org/201307292244/news/latest-news/supreme-court-asks-europe-to-fast-track-our-air-pollution-case-2244>

<http://www.clientearth.org/201305222185/news/latest-news/victory-in-the-supreme-court-2185>

<http://www.clientearth.org/201303112139/news/latest-news/supreme-court-hears-our-case-on-uks-illegal-air-pollution-2139>

4. Health Air Campaign Policy Calls

<http://healthyair.org.uk/documents/2014/11/healthy-air-campaign-policy-call-2.pdf>

5. European Environmental Bureau media releases

<http://www.eeb.org/index.cfm/news-events/news/eu-court-ruling-on-uke28099s-air-pollution-as-commission-mulls-dropping-clean-air-package/>

<http://www.eeb.org/index.cfm/news-events/news/member-states-must-oppose-withdrawal-of-key-environmental-proposals-at-eu-level/>

6. Defra annual report to the European Commission 2013

http://uk-air.defra.gov.uk/assets/documents/reports/cat05/1409261329_air_pollution_uk_2013_issue_1.pdf

7. European Commission's Clean Air Policy Package

http://ec.europa.eu/environment/air/clean_air_policy.htm

8. EU infraction on nitrogen dioxide

<http://cleanair.london/hot-topics/europe-at-its-best-takes-legal-action-against-uk-at-its-worst-on-air-pollution/>

http://ec.europa.eu/eu_law/infringements/infringements_decisions_en.htm

9. EU and UK legal limits and legislation

<http://ec.europa.eu/environment/air/quality/standards.htm>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

http://www.legislation.gov.uk/ukxi/2010/1001/pdfs/ukxi_20101001_en.pdf

<http://uk-air.defra.gov.uk/aqma/maps>

10. European Environment Agency report 2014

<http://www.eea.europa.eu/media/newsreleases/europes-cities-still-suffering-from>

11. Health impacts on nitrogen dioxide

<http://erj.ersjournals.com/content/early/2014/02/20/09031936.00114713.abstract>

<http://www.euro.who.int/en/health-topics/environment-and-health/air-quality/publications/2013/review-of-evidence-on-health-aspects-of-air-pollution-revihaap-project-final-technical-report>

<http://www.euro.who.int/en/health-topics/environment-and-health/air-quality/publications/2013/health-risks-of-air-pollution-in-europe-hrapie-project.-new-emerging-risks-to-health-from-air-pollution-results-from-the-survey-of-experts>

12. Supreme Court blog post

<http://ukscblog.com/smog-is-expected-to-hang-over-the-supreme-court-as-it-hears-the-most-important-air-pollution-case-for-a-generation/>

13. King's College London analysis of nitrogen dioxide levels

<http://www.londonair.org.uk/london/asp/news.asp?NewsId=OxfordStHighNO2&StartIndex=21>

14. London Air Quality Network monitors – Oxford Street and Brixton Road

Oxford Street 2014

http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&site=WM6&la_id=&network=All&postcode=&MapType=Google&VenueCode=

Brixton Road 2014

http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&site=LB4&Maptype=Google&mapview=all&statyear=2014&la_id=&zoom=9&lat=51.475&lon=-0.11982399999999416&laEdge=N

15. Environmental Audit Committee correspondence with the Mayor

<http://www.parliament.uk/documents/commons-committees/environmental-audit/GEN-305-London-Mayor-reply.pdf>

<http://www.parliament.uk/documents/commons-committees/environmental-audit/Boris-Johnson-Kings-College-research.pdf>