

Red Tape Challenge
Cabinet Office
70 Whitehall
London
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By email: redtapechallenge@bis.gsi.gov.uk

21 September 2011

Dear Sir or Madam

Red Tape Challenge – Environment – Air Quality

Clean Air Act must be updated for modern fuels and technologies and be enforced

I am writing on behalf of Clean Air in London (CAL) in response to the Cabinet Office's Red Tape Challenge (RTC) on the subject of Environment – Air Quality. Details of the consultation, which closes on 21 September, can be seen at:

<http://www.redtapechallenge.cabinetoffice.gov.uk/environment/air-quality/>

Details about CAL including its sponsors can be seen at www.cleanairinlondon.org.

Please consider CAL's submission to the Defra consultation on the Air Quality Standards Regulations 2010 (attached). CAL is not commenting further here on those regulations other than to note it understands ClientEarth will do so. CAL considers however that Defra may face legal challenges if it tries to consolidate the AQSR having said it does not expect to comply with the nitrogen dioxide limit values in London until 2020 and 2025 i.e. up to 15 years after the legal deadline.

Clean Air Act and related legislation and Regulations

The purpose of this letter is to highlight the urgent need to update and enforce the Clean Air Act 1993 and its associated rules and regulations (e.g. the Clean Air Enactments Regulations and The Smoke Control Area Regulations). Hereafter, CAL will refer to these collectively as the 'CAA'. See the Clean Air Act 1993 at:

http://www.legislation.gov.uk/ukpga/1993/11/pdfs/ukpga_19930011_en.pdf

Please see a fuller list of 'clean air' legislation at:

<http://www.legislation.gov.uk/all?title=clean%20air>

CAL is alarmed by rumours that the Department of Environment Food and Rural Affairs (Defra) would like to scrap some or all CAA legislation.

Background

The CAA has been focused primarily on controlling the burning of coal and oil as fuels in cities. The CAA needs to be updated to control also the use of current and future fuels and technologies in cities.

If this is not done, we face the prospect – if we are successful eventually in controlling harmful transport emissions – of emissions from boilers and other combustion sources (e.g. domestic log burning whether in ‘fancy’ stoves or not) reappearing as one of the biggest threats to public health.

You may be aware the Mayor’s new London Plan includes two and a half pages about air quality in development. The possible use of biomass gets several mentions. See from page 229 in Chapter 7 of the attached (8MB file size):

<http://www.london.gov.uk/sites/default/files/LP2011%20Chapter%207.pdf>

The London Plan in full:

<http://www.london.gov.uk/priorities/planning/londonplan>

There is clear scientific evidence that wood burning, most likely in homes in winter in breach of the CAA, is already a significant contributor to concentrations of dangerous airborne particles (PM₁₀) in London. See the relevant presentations at the excellent London Air Quality Network seminar held on 1 July 2011 (e.g. ‘PM₁₀ from wood burning in London ahead of the RHI’ lead by Dr Gary Fuller):

<http://www.londonair.org.uk/seminars/>

[http://www.londonair.org.uk/seminars/pdf/july2011/Gary%20Fuller Wood Smoke PM in London.pdf](http://www.londonair.org.uk/seminars/pdf/july2011/Gary%20Fuller%20Wood%20Smoke%20PM%20in%20London.pdf)

Local Air Quality Management

CAL understands that many local authorities do not keep details of boilers as required by the CAA or adequately control harmful emissions. This is a problem as levels of PM₁₀ can be raised substantially by the unmanaged burning of biomass (e.g. wood) in cities.

Defra’s Local Air Quality Management - Technical Guidance LAQM.TG (09) (LAQM.TG (09)) requires local authorities (sometimes called boroughs) to have this information and enforce the CAA and ensure that the air quality impact of biomass is effectively managed. Full details of LAQM.TG (09) can be seen at:

<http://www.defra.gov.uk/publications/2011/03/25/pb13081-laqm-technical-guidance-tg09/>

LAQM.TG (09) states in paragraph 5.71 on page 5-42:

“Local authorities will be able to identify any biomass combustion plant in their area that are covered by the Clean Air Act. Further information can then be obtained from the operator.

There may be cases where the Clean Air Act has not been rigidly enforced in the recent past.

Authorities will need to enforce the Clean Air Act if the air quality impact of biomass combustion is to be effectively managed.”

CAL asked three highly respected local authorities the following questions:

1. Does the local authority keep details of boilers as required by Part IV of the Environment Act 1995 Local Air Quality Management - Technical Guidance LAQM.TG(09) in order that boilers can be covered under the Clean Air Act (CAA)?
2. Is the local authority’s Planning Department passing details of all biomass applications to the Environmental Health Department and if not are you receiving all biomass applications directly?
3. By what % of biomass installations in the local authority’s area is the Clean Air Act adhered to in full?

CAL received the following replies which it has edited and published anonymously.

Borough 1

“Many Boroughs, including the one I work for, don’t keep details of boilers under the Clean Air Act. It also makes doing the Updating Screening and Assessment 2009 for biomass misleading as no CAA applications doesn’t necessarily mean no biomass if the CAA is not being enforced to require applications. If I were to use the process in LAQM.TG(09) I would report no biomass yet we have a number of installations in the Borough.

“I fear the Boroughs are not effectively able to manage biomass as they do not keep details under the CAA. When I asked our pollution control team they said that they haven’t had an application under the act in 15 years whereas I know from the planning side that there have been biomass installations that require them. They also pretty much refused to collect details because of the resource involved!”

Borough 2

“Good questions.

- i. *“As far as I’m aware only certain types of boilers above a certain size need to be on our records (and similarly only those within certain criteria need chimney height calculations). Last time we checked we found no individual boilers above the threshold, but some establishments had a series of smaller boilers to satisfy fluctuating heating demands.*
- ii. *“We have had several referrals regarding large redevelopments with proposals for biomass boilers. In every case we are questioning the economic justification, the air quality impact and the sustainability of the installation, and to the best of my knowledge none has been able to demonstrate “clean/green” credentials.*

“However our job is not being made easier by equivocal Government guidance. Mounting evidence elsewhere strongly suggests biomass burning is inappropriate in urban situations and official policy may well change in due course. Our Supplementary Planning Guidance on air quality issues includes advice on several significant issues that must be taken into consideration when including biomass boilers in planning applications.

- iii. *“Since I’m virtually certain that we don’t have any operational biomass boilers in the borough we have no answer at the moment.”*

Borough 3

Person A

“Thank you for raising issues about biomass boilers. Our stance is to encourage use of alternatives to biomass until we are able to achieve a policy in the Local Development Framework to set specific limits on emissions from plant in buildings.

“Our development control planners operate a system by which planning applications with significant noise, air quality or other environmental pollution implications are forwarded to an environmental health team for their assessment and recommendations.”

Person B

“We have very limited data on boilers and to a large extent depend on data from the London Atmospheric Emissions Inventory. We occasionally receive applications for chimney height approval but have found that in all instances the approved height is always complied with due to the building’s height. However having said that I am aware that there is some work around the number, size and types of boilers in the city that we should be compiling. However it’s a huge task.

“We do receive applications from Planning for biomass boilers where we are told of them. We also try to proactively intercept these proposals that may be buried inside an energy statement. We always object and set the criteria that the emissions should be at least as good as a gas boiler.

“It should be 100%.”

It seems many local authorities have neglected their CAA duties in recent years – perhaps deprioritising the area because the previous and current Government have downplayed the importance of action to control harmful local emissions. It is important that the Government supports and encourages local authorities to resource this activity properly.

Developers submitting applications for biomass burning plant are often not notifying the correct local authority department and planning departments are often not passing on notifications to Environmental Health. Developers must notify Environmental Health teams when they are submitting applications for the burning of biomass or other ‘dirty’ fuels.

CAL is concerned that local authorities may not be keeping details under the CAA and may be failing to control biomass burning in general.

Recommendations

The CAA is in urgent need of updating and enforcing, not scrapping.

The original CAA was focused on controlling the burning of coal and oil in cities. It needs to be updated – without opening up the opportunity to burn coal and oil again – to focus on current and

future fuels and technologies.

CAL suggests that CAA is updated, *inter alia*, to:

- i. focus on current and future fuels while not allowing historically problematic fuels;
- ii. align with Air Quality Management Areas rather than Smoke Control Areas;
- iii. continue to cover domestic and commercial properties (i.e. up to the threshold after which the Environment Agency controls harmful emissions);
- iv. cover the full range of likely combustion devices and technologies e.g. boilers and combined heat and power plants;
- v. ensure PM₁₀ and oxides of nitrogen and other harmful pollutants are controlled;
- vi. control festival and other bonfires and burning in our most polluted cities;
- vii. be easily enforceable e.g. through the use of fixed penalty notices to make it easier for local authorities to take action on unlawful domestic burning;
- viii. include protections for indoor air quality e.g. by banning the use indoor of un-flued combustion devices;
- ix. provide a 'catch all' for local authorities and others to control harmful emissions in our cities that are not explicitly controlled by another respected authority e.g. the Environment Agency; and
- x. be adaptable for future circumstances.

UK energy policy, including the Renewable Heat Incentive which promotes biomass burning with few or no air quality protections until 2012 at the earliest, is taking backward steps on air quality.

In CAL's view, it is a mistake to add combustion sources in our cities while we are experiencing the worst public health crisis since the Great Smog of 1952. In general, biomass is unsuitable for burning in our most polluted cities.

Yours sincerely,

Simon Birkett
Founder and Director
Clean Air in London

Cc:
Joan Walley MP, Chair, Environmental Audit Committee
Boris Johnson, Mayor of London
Darren Johnson AM
Murad Qureshi AM
Mike Tuffrey AM
James Cleverly AM