

12 August 2007

European Commission takes action on UK breaches of Air Quality Legal Limits

The European Commission has written to the Campaign for Clean Air in London at Commissioner Dimas' request replying to its letter dated 12 May 2007 urging him to ask the European Court of Justice to commence enforcement action against the United Kingdom (UK) for breaching European Union (EU) legal limits for air quality for which no time extensions or derogations are allowed. Both letters appear at the end of this Campaign Update. In its letter to Commissioner Dimas, the Campaign for Clean Air in London said: "Respectfully, if the European Commission does not act in the way we are requesting it will raise serious concerns about the likelihood of any European Union enforcement action related to Air Pollution whether for air quality, for carbon dioxide emissions for cars or in respect of climate change. Please set an example now in respect of air quality that will reassure European citizens about their future."

Simon Birkett, Principal Contact for the Campaign for Clean Air in London, said today:

"We welcome news that the European Commission has written to the UK requesting information on the measures it intends to take to improve the [air quality] situation and to meet the requirements in the Air Quality Directives. Significantly, we believe that the UK has received also from the European Commission a Letter of Formal Notice in respect of breaches of EU legal limits for sulphur dioxide. The latter is a first step in legal action against a Member State that is not respecting its obligations. We asked Defra [i.e. the Department for Environment, Food and Rural Affairs] for confirmation of this news more than a week ago and are still awaiting a reply."

The dangers of particulate matter, sulphur dioxide and nitrogen dioxide

EU legal limits for particulate matter (PM₁₀) and sulphur dioxide (SO₂) have been due to be met throughout the UK since 1999 legislation by January 2005 with no possibility of time extensions or derogations.

Particulate matter is created by a wide range of sources including road vehicles, domestic heating (coal and wood fuels), quarrying and other industrial sources. There is considerable evidence that it is associated with death, admissions to hospital for the treatment of both respiratory and cardiovascular diseases and symptoms among patients suffering from asthma. Transport for London's consultation for the Low Emission Zone showed that some 1,392,000 people were affected by breaches of EU legal limits for particulate matter in 2005 and that, without further action, this number could be 96,000 in 2012 and still 46,000 in 2015.

SO₂ emissions arise mainly from coal fired power stations (65%) and combustion generally. It is an irritant gas that, in high concentrations, provokes narrowing of the airways. There is also evidence that long term exposure to SO₂ itself may be linked to losses in life expectancy and that sulphate particles, produced by oxidation of SO₂, may increase the risk of death. Defra's new Air Quality Strategy shows, on pages 72 and 73 of Volume 2, that some 25 square kilometres of the UK breached EU legal limits for SO₂ in 2005 affecting some 4,000 people with no reduction in the number of people affected by 2020.

Nitrogen dioxide (NO₂) is formed mainly by combustion processes in particular road transport and the electricity supply industry. It is a toxic gas that is a proxy for the presence of many other air pollutants and the Environmental Protection Agency in the United States says that its health concerns include effects on breathing and the respiratory system, damage to lung tissue and premature death. NO₂ reacts with other chemicals to form a wide variety of toxic products some of which may cause biological mutations. Although EU legal limits for NO₂ are not due to be met until January 2010, Defra's new Air Quality Strategy shows on page 52 of Volume 2 that some 55 square kilometres of London are expected to breach EU legal limits for NO₂ with some 319,000 people affected in 2010. These numbers fall to 38 square kilometres and 155,000 people respectively by 2020 and may be underestimates since they use a "high" base year of 2003 for forecasting.

Key issues in relation to the European Commission's response and generally

1. A recent World Health Organisation report shows that the UK has the second highest death rate from air pollution in Western European behind The Netherlands:

http://www.who.int/quantifying_ehimpacts/countryprofilesebd.xls

2. There is no doubt that the UK breached EU legal limits for PM₁₀ or SO₂ in 2005. Defra has highlighted the SO₂ legal breaches in its recent Air Quality Strategy and Mayor Livingstone has made no secret of the widespread breaches of EU legal limits for PM₁₀ in London in 2005. See page 2:

http://legacy.london.gov.uk/mayor/environment/air_quality/docs/naqs-review.pdf

3. In general, while the Government refers to reduced air pollution since 1999, a much more important trend is the evidence of worsening air pollution in recent years. For example, see a Defra report on Sustainable Indicators:

http://collections.europarchive.org/tna/20080530153425/http://www.sustainable-development.gov.uk/progress/data-resources/documents/sdiyp2007_a6.pdf

and a Government statement on "Greater action needed to deliver cleaner air":

<http://collections.europarchive.org/tna/20071104144352/http://defra.gov.uk/news/2007/070123d.htm>

4. The health consequences of air pollution are much more serious than most of us have realised with over 1,000 premature deaths a year in London. This is more than four times the number of people who die annually from road traffic accidents in London. Contrast it too with the legal and parliamentary time committed to tackling passive smoking in the workplace which caused some 617 premature deaths per year across the whole UK:

<http://www.bmj.com/cgi/content/full/330/7495/812>

The EU Environment Commission estimates that particulate matter causes some 350,000 premature deaths a year across Europe. See:

http://www.un.org/esa/sustdev/csd/csd14/statements/ec_11may.pdf

Recent US research highlighted on the BBC and elsewhere emphasises the serious impact of diesel fumes on health i.e. particulate matter from diesel plus cholesterol is "one plus one equals three not two". Please see link to recent story on the BBC:

<http://news.bbc.co.uk/1/hi/health/6915057.stm>

5. Particulate matter produced by diesel engines is at the heart of many air quality problems. A recent report by the Air Quality Expert Group (page 186) shows that diesel passenger cars produce, over their life cycle, some 17% less carbon dioxide (CO₂) but over 65% more each of the hazardous particulate matter and nitrogen oxides:

<http://www.defra.gov.uk/publications/2011/04/13/pb13378-air-pollution/>

Amazingly, a Written Answer by Minister of State Stephen Ladyman on 25 June 2007 shows diesel engines for passenger cars producing 16.9 times more particulate matter and over 83% more nitrogen oxides than the petrol equivalents (with 4.3 % less carbon dioxide).

<http://www.theyworkforyou.com/wrans/?id=2007-06-25e.145736.h>

We were so alarmed by these statistics that we checked Hansard which confirmed them:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111003/text/111003w0001.htm>

California is so worried about the health effects of particulate matter that it aims to reduce diesel emissions of particulate matter by 85% by 2020 (see press release below) whereas the UK is expecting diesel use to grow by about 50% between 2002 and 2020 (see page 183 of the AQEG report referred to above) with a 54% only reduction in particulate matter! Is the UK taking the public health risks of diesel engine emissions seriously?

<http://www.arb.ca.gov/newsrel/nr072607.htm>

6. Air pollution needs to be tackled holistically with sensible judgements being made in the inevitable trade-offs between air quality and climate change. A classic example is the latest Department for Transport "Act on CO₂" calculator which is likely to encourage people to choose cars with diesel engines because of their small CO₂ (i.e. climate change) advantage even though that generate substantially more of the hazardous particulate matter and nitrogen oxides. We should question whether there is still a place for diesel engines in large cities while there is such a serious public health problem.

Instead, we recommend a simple approach to these complicated air pollution trade-offs in cities. Simon Birkett said there should be an "Air Pollution Trade-off Principle":

"Treating air pollution holistically requires difficult trade-off decisions between air quality

and climate change issues. The Campaign for Clean Air in London encourages policy makers to accept a disbenefit of up to 5% in climate change terms provided there is an associated benefit of over 50% in air quality terms (and vice versa) i.e. one to 10. Such an approach to trade-offs should be considered acceptable since large benefits may be hard to find and small disbenefits can be rectified relatively easily through other policy measures.”

7. We do not accept the approach to Environmental Justice taken by the UK Government or the European Commission in respect of air pollution hotspots. In our view, everyone is entitled to: (i) the same minimum protections (i.e. Limit Values); (ii) no worsening of air pollution; and (iii) ongoing improvements (whether through exposure reduction or otherwise). We do not understand the European Commission’s reference to “spatial representativeness” since our understanding is that the current EU legal limits must be met everywhere. For the record, the Campaign for Clean Air in London does not consider that the UK Government has made or is yet planning to make reasonable efforts to achieve the EU legal limits for air quality. See our recent article “No political will in new UK Air Quality Strategy”.
8. The Draft Climate Change Bill makes only two, incidental references to air quality - saying only that tackling climate change might have air quality benefits! We urge the UK Government to include measures in the forthcoming legislation that will require and empower the Committee on Climate Change to consider air pollution holistically in its assessments and recommendations.

Legal Process for enforcing European Union obligations

Article 226 of the Treaty gives the Commission powers to take legal action against a Member State that is not respecting its obligations.

If the Commission considers that there may be an infringement of EU law that warrants the opening of an infringement procedure, it addresses a "Letter of Formal Notice" (first written warning) to the Member State concerned, requesting it to submit its observations by a specified date, usually two months.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "Reasoned Opinion" (final written warning) to the Member State. This clearly and definitively sets out the reasons why it considers there to have been an infringement of EU law, and calls upon the Member State to comply within a specified period, usually two months.

If the Member State fails to comply with the Reasoned Opinion, the Commission may decide to bring the case before the Court of Justice. Where the Court of Justice finds that the Treaty has been infringed, the offending Member State is required to take the measures necessary to conform.

Action needed to address a serious public health “crisis” in London

Simon Birkett, Principal Contact for the Campaign for Clean Air in London, said:

“We urge the European Commission to play its part in addressing a serious public health “crisis” in London by taking the next legal steps on enforcement action against the UK

Government unless the UK demonstrates within two months that it will rectify quickly all breaches of EU legal limits for air quality in a way that is likely to take account fully of worsening weather patterns.

“In particular, we urge the European Commission to take action as necessary against the UK in relation to London (and other UK cities if appropriate) as a “specific location” including in respect of further breaches of EU legal limits for air quality in respect of 2006 (once formal notification of those breaches is sent to the European Commission by the end of September 2007).

“Mayor Livingstone admits that there were over 1,031 premature deaths in London from particulate matter alone in 2005. This is more than four times the number of people that died from road traffic accidents in London in the same period and well over the 617 premature deaths annually across the UK as a whole, caused by passive smoking at work before new legislation was implemented to ban workplace smoking.

“With EU legal limits for air quality due since 1999 legislation to be met by January 2005 (for particulate matter and sulphur dioxide) and January 2010 (for nitrogen dioxide), we urge the UK Government and all the candidates for the Mayoral election in 2008, including Mayor Livingstone, to pledge that London will achieve sustainably at least World Health Organisation recommended standards of air quality throughout London by no later than the London 2012 Summer Olympics. In practice, these are the same as the EU’s legal limits for air quality.

“China has seen recently how seriously the International Olympic Committee takes the air quality issue and London cannot credibly claim to host the “greenest games in modern times” if it does not achieve these standards sustainably by 2012. If London fails to capitalise on the momentum behind the London 2012 Olympic Games, it is likely still to be making the same excuses in 2022. In this regard, we were disappointed to find no references to “air quality” in Your 2012 published recently and a downgrading of ambition from the “greenest Games in modern times” to no more than “a green Games”.

“Separately, we support, in principle, the proposed Emission Related Congestion Charging scheme to the extent it will encourage a shift from larger and dirtier vehicles to smaller and cleaner vehicles in an approach that tackles air pollution holistically and delivers meaningful improvements in air quality. We want to see a similarly more sophisticated approach to the road pricing element of congestion charging that uses a “tag and beacon” system instead of the current “blunt instrument” approach. We plan to read the consultation documents carefully and submit a detailed and considered response in due course.”

Simon Birkett
Principal Contact
Campaign for Clean Air in London

Contact Simon through the BBC Action Network for a copy of the European Directive: Air Pollution Scorecard

SEE BELOW THE FULL TEXT OF THE LETTER SENT ON BEHALF OF COMMISSIONER DIMAS TO THE CAMPAIGN FOR CLEAN AIR IN LONDON

Date: 17 July 2007

Dear Mr Birkett

Commissioner Dimas has asked me to reply to your letter of 21 May 2007. I apologize for the late reply.

The Council [of Ministers] adopted its common position in relation to the revised ambient air quality Directive on the 25th June. I attach the Commission's view of the Council's position for your information.

http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0320en01.pdf

The second reading [of the new Air Quality Directive] is foreseen to start in September when the Council formally communicates its position to the European Parliament. As such, the directive is unlikely to enter into force before early 2008. I can assure you that all three institutions are aware of the consequences of the delay – it is already reflected in certain modifications of the common position for example concerning monitoring for the exposure reduction target. During the second reading, the Commission will continue to strive for a high level of public health protection.

You raised concerns about the move towards the exposure reduction concept. It was the “environmental justice” argument you mention that led us to propose the twin objective of an exposure reduction target in conjunction with a limit value. Whilst the limit value will prevent unduly high risks for individuals, there is no known threshold for adverse impacts from exposure to particles and so health benefits will be realised even where concentrations are reduced below the limit value and this is the basis of the exposure reduction target. As regards your air pollution scorecard, it is important to flag the differences between the spatial representativeness of the EU legally binding limit values and the WHO [i.e. World Health Organisation] recommendations.

We are aware of the air quality situation in London. Besides London, exceedances of the daily PM10 limit value have been recorded in 40% of EU zones and agglomerations in 2005. The official results for 2006 reporting year are due at the end of September. The issue has been anticipated and addressed in the Commission proposal for a new air quality Directive with several provisions including the ability to request, subject to certain conditions, a time extension to comply with the PM10 limit values. As stated above, the Directive is expected to enter into force in 2008. In the meantime, the Commission has requested information from the Member States on the measures they intend to take to improve the situation and to meet the requirements in the [current] AQ Directives.

The information received from MS [i.e. Member States] will allow the Commission to better assess the extent of the problem and the action needed, either horizontally or in relation to specific locations.

We appreciate your efforts to raise the awareness on this important public health issue.

Yours sincerely

Marianne Klingbeil

Head of Unit

Env.C.3 – Clean Air & Transport Directorate C – Climate Change & Air Directorate-General
Environment European Commission

SEE BELOW THE FULL TEXT OF THE LETTER SENT TO COMMISSIONER DIMAS BY THE CAMPAIGN FOR CLEAN AIR IN LONDON

Commissioner Stavros Dimas

The Commissioner for the Environment DG Environment Directorate-General
European Commission B – 1049 Brussels Belgium

12 May 2007

Dear Commissioner Dimas

Setting and enforcing European Union Legal Limits for Air Quality

Summary

This letter is sent on behalf of the Campaign for Clean Air in London to ask you for reassurance, skilful facilitation and decisive action please in respect of three matters:

- first, please will you explain the reasons for the delay in the Second Reading of the proposed new European Union (EU) Directive on Air Pollution and give reassurances about the likely consequences of that delay?;
- second, please will the Environment Directorate seek to achieve, as facilitator for the Second Reading, at least the “Highest Common Denominator” compromise between the position taken formally last year by the Council of Ministers and the European Parliament in respect of that Directive?; and
- third, please will the Environment Directorate-General (DG) commence now the process for formal enforcement action against the Member States that breached the EU Legal Limits for coarse particulate matter (PM₁₀) in 2005 (and subsequently in respect of 2006)?

Other points are raised in this letter on which your comments would be most welcome.

We regret the length of this letter but given the seriousness of the issues involved, and the fact that your response could be relevant to all Member States, we consider that it is better to describe the issues fully rather than briefly. We have copied President Barroso since some of the points raised may have implications for other portfolios.

The Campaign for Clean Air in London

The Campaign for Clean Air in London has only one aim which is to achieve urgently at least World Health Organisation (WHO) recommended standards of air quality throughout London. Given that most of these have been required to be met since 1999 legislation by January 2005 (in respect

of coarse particulate matter i.e. PM₁₀) and January 2010 (for nitrogen dioxide i.e. NO₂), we have written recently to the Olympic Delivery Authority asking it to commit, as part of its wider commitment for London 2012 to be the greenest Games in modern times, to London achieving sustainably at least WHO recommended standards of air quality throughout London by no later than the London 2012 Summer Olympics. You were copied on that letter. Subsequently, the Mayor of London has made a landmark speech, setting out a vision of an economically successful, environmentally sustainable and socially just London to be achieved within the next five years or so.

The Campaign for Clean Air in London has received support from the Mayor of London, leading politicians from the four main political parties in London as well as leading business and community groups including the Central London Partnership, London First and The Knightsbridge Business Group. We have recently received a pledge of support from the National Society for Clean Air and Environmental Protection. Our campaign website is shown in the letterhead above. I wrote to you on 10 May last year on behalf of The Knightsbridge Association which supports our campaign.

Unexpected delay to the proposed new EU Directive on Air Pollution

The Common Position on the proposed new EU Directive on Air Pollution has still not been published ahead of a Second Reading in the European Parliament even though the European Parliament voted on the First Reading on 25 September 2006 and the Council of Ministers agreed its position in respect of the proposed legislation on 23 October 2006. Precedent suggests that the text would normally have been published several months ago.

We are concerned about this delay for several reasons:

1. the new Directive represents a welcome step in rationalising and making more transparent the law for air pollution compared to the current situation with some five EU Directives involved;
2. the current delay may already be enough to mean that the new EU Directive would not come into force until 2008 with the consequence, currently, that some of the proposed new deadlines for meeting EU Legal Limits would slip by a year (since they are currently designed to come into force a fixed number of years after the implementation of the new Directive);
3. as the Intergovernmental Panel on Climate Change (IPCC) made clear in the Working Group III report, titled "Mitigation of Climate Change" and published on 4 May 2007 as part of its 4th Assessment report, in its Summary for Policymakers in paragraph 24 on page 31:

"Governments have a crucial supportive role in providing appropriate enabling environment, such as, institutional, policy, legal and regulatory frameworks, to sustain investment flows and for effective technology transfer – without which it may be difficult to achieve emission reductions at a significant scale".

This recommendation was categorised as "high agreement, much evidence" which you will know is the highest of nine categories used by the IPCC to communicate the importance and certainty of a recommendation.

The delay means that the UK and other countries, which are currently revising their long term

air quality strategies (and in the UK considering a Climate Change Bill) are doing so against the background of the “old” regime rather than an unambiguous new regime. As a result, the UK Government may, mistakenly, continue to exclude the treatment of air quality from the Climate Change Bill; and

4. finally, it creates an impression in respect of Air Pollution that air quality is the “poor relation” of climate change when, as you have emphasised, some 350,000 European citizens die prematurely every year from particulate matter alone and ozone may be responsible for another 20,000 premature deaths.

Question 1: Please will you explain the reasons for the delay in the Second Reading of the proposed new European Union (EU) Directive on Air Pollution and give reassurances about the likely consequences of that delay? We would welcome please your reassurance and any comments also in respect of the four issues raised above.

At least the “Highest Common Denominator” compromise in new EU Directive

The Campaign for Clean Air in London, was disappointed by aspects of the stances taken by each of the Council of Ministers and the European Parliament in their “votes” late last year on the proposed new EU Directive on Air Pollution. In particular, we were disappointed by the possibility of long further delays and/or time extensions being considered when the current earliest dates for compliance were set in 1999 legislation as January 2005 and January 2010 for PM₁₀ and NO₂ respectively. In the case of NO₂ we were shocked to see the European Parliament voting to weaken existing legal protections. We have therefore been campaigning in London for action to be taken to meet the current EU Legal Limits urgently, by close to the original dates and at the latest sustainably by no later than the London 2012 Summer Olympics.

As the facilitator of the Second Reading by the European Parliament on the proposed new EU Directive on Air Pollution, please will the European Commission seek a compromise between the European Parliament and the Council of Ministers that represents at least the “Highest Common Denominator” of their respective formal positions in 2006 i.e. the better protection for citizens offered in respect of each different position taken in their formal “votes” at the end of 2006.

In the hope that it might make the process and outcome as simple and transparent as possible, we have produced an “EU Directive: Air Pollution Scorecard” that summarises the positions for PM₁₀, PM_{2.5} and NO₂ as taken by each of the WHO, current EU legislation and then the European Parliament and the Council of Ministers based on their “votes” last year (attached as a Table). In respect of each item, we have recorded the “Mean”, “Exceedances”, “Earliest date required for compliance”, “Justification for a time extension” and the “Final backstop date” (i.e. the date after which no further derogations or time extensions are allowed) as the key elements.

Where, as mentioned earlier, the timetable only begins once the new EU Directive is implemented, we have made the following assumptions:

- a) the new Directive is implemented in 2007;
- b) the first period can begin only on 1 January of the year after implementation;

- c) the three years or three plus three years extensions run from b. above;
- d) Member States are required to report breaches of EU Legal Limits by 30 September in respect of the previous calendar year; and
- e) the European Commission can only begin enforcement proceedings against Member States after d. above.

Clearly, on the above basis, a year would be “lost” if implementation of the new Directive is delayed from late 2007 to early 2008.

We plan to publish a final version of the scorecard after the Second Reading based on the actual form of the new legislation with a view to showing how positively the result compares to the Highest Common Denominator and therefore which of the two “sides” seems to have been the most constructive. We may also publish details of the voting behaviour of the political parties after the Second Reading as we did after the First Reading.

There are four further points that concern us in respect to the current form of the EU Directive on Air Pollution, particularly if there is a risk of delay now into 2008:

1. please seek in the Second Reading for any deadlines for meeting EU Legal Limits that would be delayed a year by the implementation of the Directive slipping, unexpectedly, from 2007 to 2008 (if it does), to be brought forward commensurately (i.e. expected to be one year) so that there is no overall delay in protecting Europe’s citizens (e.g. in relation to meeting EU Legal Limits for PM₁₀);
2. where “upfront” monitoring is needed to set baselines for determining compliance (or otherwise) with Exposure Reduction EU Legal Limits for PM_{2.5} by 2020, please argue against any postponement of the 2020 date for any reason. There are several ways in which the 2020 targets could be calculated even with a delay in the implementation of the new Directive such as:
 - i. setting a baseline based on average levels of PM_{2.5} in 2009 and 2010 only with the final period remaining 2018, 2019 and 2020;
 - ii. setting a baseline based on average levels of PM_{2.5} in 2009, 2010 and 2011 with the final period remaining 2018, 2019 and 2020 and leaving the percentage change required at 20%;
 - iii. as (ii) above but making it 25% (say) to allow for the European Commission’s best estimate of the change in air pollution levels between an annual average over 2008, 2009 and 2010 and that over 2009, 2010 and 2011;
 - iv. slip the first three year period by six months not 12 months perhaps combined with one of the above approaches; or
 - v. the Environment DG could issue provisional guidance to Member States now in respect of the form of pollution monitoring that is almost certainly going to be required. In this

respect, any responsible Member State should be well advanced in planning and/or implementation already.

No doubt, other mechanical solutions are also possible that would achieve the desired “output”;

3. we remain deeply concerned by the proposed move to “Exposure Reduction” where the lives of those who live in “hot spots” may be compromised while air pollution is reduced for those who already have clean air. Would you please comment on how such an approach can be reconciled with environmental justice and the basic human right of free access to clean air of an acceptable quality?;
4. finally, and most importantly, given that the new EU Directive on Air Pollution has been in contemplation since 2005 (and/or earlier), please encourage the Council of Ministers and the European Parliament to consider whether they still require the long additional delays they sought in the second half of 2006. Anything they are willing to do above and beyond the “Highest Common Denominator” would be most welcome and would save lives – even if it is shortening only proposed “Final backstop dates”.

Question 2: Please will the Environment DG seek to achieve, as facilitator for the Second Reading, at least the “Highest Common Denominator” compromise between the position taken formally last year by the Council of Ministers and the European Parliament in respect of that Directive? Please would you ask your staff to tell us if we have made any mistakes in the EU Directive: Air Pollution Scorecard? Finally, we would welcome please your comments in respect of the four issues raised above.

Enforcing current EU Legal Limits for PM₁₀

The Campaign for Clean Air in London considers that enforcement is an important and necessary element of any effective legislative framework. We do not understand why infringement action has not yet been taken against Member States that breached EU Legal Limits for PM₁₀ in 2005 when no derogations are possible in respect of the PM₁₀ legal breaches. We urge the European Commission to commence the infringement process immediately in respect of 2005 legal breaches (and for 2006 legal breaches as soon as sufficient information has been submitted by Member States).

As you know, London has very serious air pollution problems. The Mayor of London has estimated, for example, that some 1,031 people died prematurely in London in 2005 due to particulate matter (PM₁₀) exposure which is more than four times the number that died from road traffic accidents. In a consultation document published at the end of last year, in connection with the proposed Low Emission Zone, Transport for London (TfL) noted that 1,370,000 people in London would be exposed to an annual mean level of nitrogen dioxide (NO₂) of over 40 µg/m³ in 2008 unless action is taken to improve air quality.

Tables showing monitoring stations where the UK breached EU Legal Limits for PM₁₀ can be found for 2005 and 2006 respectively at:

2005

Annual mean (not to be greater than $40 \mu\text{g}/\text{m}^3$):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=S3&f_year=2005&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

24-hour mean ($50 \mu\text{g}/\text{m}^3$ not to be exceeded 35 times):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=E21&f_year=2005&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

2006

Annual mean (not to be greater than $40 \mu\text{g}/\text{m}^3$):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=S3&f_year=2006&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

24-hour mean ($50 \mu\text{g}/\text{m}^3$ not to be exceeded 35 times):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=E21&f_year=2006&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

You will see on these sites that Marylebone Road breached the EU Legal Limit annual mean in 2005 and to a greater extent in 2006. Bradford, Camden and Marylebone Road breached EU Legal Limits for the number of daily exceedances in 2005 and they were joined by Glasgow, Port Talbot (which was on the margin) and Scunthorpe Town in 2006. Amongst other things, these outcomes show a consistent and worsening trend for particulate matter in the UK. Furthermore, given that these sites are representative of their cities, there are clearly many people adversely affected by the air pollution problems.

In respect of 2007, according to unratified data published on the excellent London Air Quality Network, seven pollution monitoring stations in London (including Marylebone Road) have already breached the EU Legal Limit for the number of daily exceedances for PM₁₀. The results for Marylebone Road in 2007 can be found at:

<http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&bulletin=&site=MY1&postcode=&statyear=2007&mapview=all&objective=All>

We do not understand:

1. why enforcement action has not yet been taken place in respect of 2005;

2. how such a position is consistent with environmental justice and the human rights of those exposed to dangerous levels of air pollution;
3. how those with a duty to work towards the EU Legal Limits can be properly fulfilling their responsibilities; or
4. how this position can be consistent with the requirement not to make matters worse. Furthermore, given the current availability of technologies, such as engines meeting Euro IV emission standards, and road pricing mechanisms in London we do not understand how the United Kingdom generally can be deemed to be making “all reasonable efforts” to achieve EU Legal Limits (which we understand is expected to be a “test” for a derogation or time extension from meeting EU Legal Limits for PM₁₀ after the implementation of the new Directive).

Against this background, we are aware of a Petition lodged with the European Parliament Committee on Petitions by the West London Residents Association (representatives of which are copied on this letter) in respect of serious breaches of EU Legal Limits for PM₁₀ in Earls Court Road. As far as we are aware, a response is awaited from the Committee.

Question 3: Given all the above, please will the European Commission ask the European Court of Justice under Article 226 of the European Community Treaty to commence enforcement action against the Member States that breached EU Legal Limits for PM₁₀ in 2005 (and subsequently in respect of 2006)? Finally, we would welcome please your comments in respect of the four issues raised above.

We recognise that such infringement action may be required against more than 20 countries and that it may be time consuming and demanding but we believe that it is essential in order to maintain the credibility of EU legislation on Air Pollution – particularly against the background of worrying signs in other areas (see the section on unexpected delays above). The enforcement action could take place, if necessary, in parallel with efforts to achieve at least the Highest Common Denominator position in respect of the new EU Directive on Air Pollution and then any abatement plans to be agreed under the new legislation.

Respectfully, if the European Commission does not act in the way we are requesting it will raise serious questions about the likelihood of any EU enforcement related to Air Pollution whether for air quality, for carbon dioxide (CO₂) emission targets for cars or in respect of climate change. Please set an example now in respect of air quality that will reassure European citizens about their future.

Thank you for taking seriously our concerns about air pollution in London and giving the issues we raise your particular attention. We recognise that you are already taking many steps that will improve air quality across Europe.

We look forward to hearing from you.

With best wishes.

Yours sincerely

Simon Birkett
Principal Contact
Campaign for Clean Air in London

By hand:
Winston Fletcher, Chair, The Knightsbridge Association
Carol Seymour-Newton, Honorary Secretary, The Knightsbridge Association

Cc:
President Barroso
David Miliband, Secretary of State for Defra
Marianne Klingbiel, Head of Unit, Air Quality, Environment DG
Ken Livingstone, Mayor of London
Sian Berry, Principal Speaker and Green Party candidate for Mayor of London
John Bird, Independent candidate for Mayor of London

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James Bidwell, Chief Executive, Visit London
John Brewster OBE, Chairman, Port Health and Environmental Services Committee, Corporation of London
Patricia Brown, Chief Executive, Central London Partnership
Robert Buxton, Deputy Chairman, West London Residents Association
Sarah Dudgeon, National and Local Air Quality, Defra
Nick Fairholm, Transport for London
David Higgins, Chief Executive, Olympic Delivery Authority
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Professor Frank Kelly, Kings College London
Dr Michal Krzyzanowski, Regional Adviser, Air Quality and Health, WHO
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Blake Ludwig, Campaign Director, Alliance Against Urban 4x4s
Professor Bob Maynard, Health Protection Agency
Paul McLoughlin, UK General Manager, Zipcar
Philip Mulligan, Acting Chief Executive, National Society for Clean Air and Environment
Derek Picot, Chairman, The Knightsbridge Business Group
Dr Gordon Taylor, Chairman, West London Residents Association
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Ben Bradshaw MP, Minister for Air Quality, Labour
Alistair Carmichael MP, Shadow Transport Secretary, Liberal Democrat
Mrs Gwyneth Dunwoody MP, Chair of the Transport Committee, Labour
Mark Field MP, Conservative

Chris Grayling MP, Shadow Secretary of State for Transport, Conservative
Chris Huhne MP, Shadow Environment Secretary, Liberal Democrat
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