

From: "Robert Latimer" <robert@latimers.com>
To: <aphrodite.smagadi@unece.org>
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Subject: letter 2012 09 14 EB to RL.pdf - Adobe Reader

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Dear Ms Smagadi

Re: Case C-301/10 Infringement proceedings brought by the Commission against United Kingdom in respect of Directive 91/271/EEC (2).

Summary

1. Following the case held in the European Court Justice the Advocate General gave his Opinion on the 26 January 2012. It was immediately noticed in items 71 and 79 of the AG Opinion that the information was incorrect i.e. dry weather flow rate of the sewage system was 4.5 DWF and the capacity of the Interceptor Tunnel would have to be increased to 10,800 cu meters. This information formed the most important parts of the Opinion, both were incorrect as the system was designed to spill at 6XDWF and the tunnel already has a capacity of over 15,000 cu meters.

2. This information might not seem important until you read items 83 and 84 which were based on this incorrect information the result being the statements were made - I quote: -

"83. In my view, the key document here is the study carried out in 2010, which I mentioned in point 79. Above. In light of that study, it is above all clear that substantially reducing the discharges of untreated water at Whitburn does not present particular problems in terms of the technology; it would

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fundamentally require enlargement of the existing interceptor tunnel, and at no point has the UK indicated that a solution of that nature would be impracticable”

“84. At the same time, however, the study calculated the extent to which the quality of the receiving water might be improved as a result of enlarging the tunnel and, in consequence, reducing the discharges. The point of reference used was the ceiling of 20 discharges, thus adopting the guidance provided by the Commission during the pre-litigation procedure. In that context, the study posited an improvement of only 0.3% in water quality and accordingly concluded that the cost/benefit ratio did not justify taking any further measures at Whitburn”

It was immediate concern to us, being aware that if, as the AG stated in his view, the key document was the 2010 study then what had gone before the Court was at best incorrect and so was his Opinion so the need to see this study was of the utmost importance to the people of Whitburn. I made an Environment Information Regulation request, highlighting the flaws in the evidence that had gone before the Court and requesting to see the study. While Defra admitted the 10,800 cu metres figure was incorrect they refused to provide either the calculations showing the CSOs were spilling at 4.5DWF or the 2010 study.

3.The UK Government used the following exceptions not to provide the information; it would affect international relations, defence, national security or public interest, yet, as we have pointed out, none of these exceptions apply in this case and were being used solely to block our access to information so we could show the Court that the evidence before them was untrue. The excuses and actions of the UK Government flew in the face of the Convention to which they had signed up, to thus

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making a mockery of the claim that they stated that they allowed – ‘Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention).’

Yours sincerely

Bob Latimer

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**EUROPEAN DIVISION
EU LITIGATION**

Treasury Solicitors
One Kemble Street, London WC2B 4TS

DX 123242 Kingsway
Switchboard: (020) 7210 3000 (GTN 210)
Direct Line: (020) 7210 3419
Direct Fax: (020) 7210 3132
Head_of_EU_Litigation@tsol.gsi.gov.uk

Please Quote: C-301/10

Your Reference:

The Registrar
Court of Justice of the European Union
Boulevard Konrad Adenauer
Kirchberg
L2925
LUXEMBOURG

2 March 2012

Dear Sir,

Re: C-301/10 Commission v United Kingdom

I write in relation to the Opinion of Advocate General Mengozzi on the above matter, delivered on 26th January, to make a clarification in relation to paragraph 79 of that Opinion.

In paragraph 79, Advocate General Mengozzi stated as follows:

"The United Kingdom then refers to a study, carried out in 2010 to review the situation at Whitburn in the light of the Commission's reasoned opinion and additional reasoned opinion. In particular, the study assessed the possible consequences of reducing the number of discharges to below the 20 per annum threshold, as the Commission appeared to require, especially in the additional reasoned opinion. The study found that, in order to maintain the number of discharges at below 20 per annum, ***the only possible solution would be to upgrade the interceptor tunnel whose capacity would have to be increased to 10 800 m³***. A change of that nature would result, however, in a minimum improvement – equivalent to approximately 0.31% – in the quality of the receiving waters, calculated on the basis of the parameters normally employed to assess bathing waters. For those reasons, the study did not recommend any change to the Whitburn collecting system." (emphasis added).

The United Kingdom would like to clarify that the conclusion of the study quoted by AG Mengozzi was that the capacity would need to be increase **by** 10,800 cubic metres; the current storage at this site is already 15,000 cubic metres.

Should the Court have any queries I would be happy to assist.

Yours faithfully,



Elisabeth Jenkinson
Agent for the United Kingdom

European Division (EU Litigation and Cabinet Office Legal Advisers) – providing and coordinating EU legal services across Government in support of UK policy

Director: Paul Berman
Joint Heads of EU Litigation: Shasa Behzadi Spencer and Elisabeth Jenkinson
Joint Heads of COLA: Caroline Croft and Kevan Norris

concerning collection systems. There are no allegations concerning the lack or inadequacy of treatment plants.

70. Whitburn is part of the agglomeration of Sunderland, which is served by a single primary collecting system of the combined type, into which both urban waste water and rainfall flows. In normal circumstances, the water from Whitburn's collecting systems is transferred, via a number of pumping stations (Seaburn, Roker and, subsequently, St Peters) to the Hendon treatment plant which treats the waste water from the whole of the agglomeration.

71. When the amount of water collected in the Whitburn collecting system exceeds 4.5 times the dry weather flow,¹⁵ the excess waste water is diverted into a storm sewage interceptor tunnel which has an operational capacity of 7 000 m³. When the amount of water present in the collecting systems subsides, the water stored in the tunnel is returned to the collecting system and pumped to the Hendon plant for final treatment. If, however, the tunnel's operational capacity is exceeded, the excess water is discharged directly into the sea, undergoing only mechanical filtering through a 6 mm mesh screen. That discharge takes place through a sea outfall that is 1.2 km in length.

72. During the years prior to the date set in the reasoned opinion (1 February 2009), the discharges of untreated water at Whitburn were as set out in the table below. The figures were provided by the Commission but are not disputed by the United Kingdom.

Year	Number of discharges	Volume discharged (m ³)
2005	27 ¹⁶	542 070
2006	25	248 130
2007	28	478 620
2008	47	732 150

73. According to the Commission, those figures are indicative of an excessive number of discharges of untreated water into the environment, incompatible with the obligations incumbent on the Member States under the Directive.

¹⁵ – The dry weather flow of a collecting system is the quantity of water collected in it in the absence of rainfall.

¹⁶ – In the letter of 15 June 2006 sent to the Commission by the United Kingdom in response to the reasoned opinion, the number of discharges for 2005 was given as 85. The total volume of spill is, however, still given as equivalent to 542 070m³.