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 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 metes 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 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