To: "aarhus compliance" "Robert Latimer"
From: "Robert Latimer" [email addresses redacted]
Date: 01/28/2015 09:26AM
Subject: Re: Decision V/9n

(See attached file: Scan0842.pdf)Dear Ms Toop

Re: Decision V/9n – progress report from Party concerned.

Sorting through the papers so I can approach the European Court of Justice and I have to say I am dismayed to see what we are up against and for that reason I feel the Aarhus Committee should see this as a further comments on the UK’s first progress report.

Bearing in mind I am layman not a lawyer, I want the Committee to see just how desperate it is for a member of the public on the ground to obtain information and to get an honest answer from DEFRA. It is alright arguing about all these proposals and ideas on Court costs etc but the fundamental issues are being overlooked. If this is what is meant by Public Participation on Decision making and Access to justice in Environmental Matters under the Aarhus Convention then it is not working.

It is horrifying to think, being, not only a UK Citizen but also a EU Citizen, that such people as the Head of UK Waste Water Treatment, Bathing and Shellfish Water, Chemicals and Permitting Water Availability and Quality Programme who represent us should write to me on the 20 February 2012 and say:

- "The conditions in the permit are not expressed in terms of Dry Weather Flow but rather litres per second which must be passed forward before discharges to the tunnel are allowed. These are the legal basis for the consent and would be used for assessing compliance. Dry Weather Flow is not relevant"

I now want you to look at page 1232 of the UK’s response to the European Commission Reasoned Opinion dated 27 February 2009 paragraph 21: -

- "21. The fact remains that dry weather flow (DWF) is one of the internationally used design criteria for collecting systems and CSOs, in that multiples of DWF are specified as minimum standards of dilution for discharge into receiving waters"
The Head of DEFRA’s Water Quality tells me dry weather flows are not relevant - yet as you can see the reasoned opinion claims DWF is internationally used as the design criteria for collecting system, so he is wrong.

The situation gets even worse as you will see, I refer again to the Head of DEFRA’s Water Quality letter dated 20 February 2012 where he states:

- "The conditions in the permit are not expressed in terms of DWF but rather litres per second which must be passed forward before discharges to the tunnel are allowed. These are the legal basis for the consent and would be used for assessing compliance"

This once again shows a person who does not know what he is talking about, this is a frightening thought for the Whitburn public even more so when you consider he is Head of UK Water Quality. Of course it is litres, and in the case of Whitburn the pass forward figure is 129l/s before a discharge to the tunnel is made. This figure is calculated, as shown in the consent application notes (I enclose). These notes show the DWF flow is multiplied by 6 to give a figure of 129l/s for Whitburn and this is the legal basis for the consent, not 4.5XDWF as DEFRA claim. The application notes refer to the dry weather flow as being 19 l/s. If we multiply this by 6 although not exact science, this means the system is discharging before the pass forward is reached and is in the region of 85 l/s so is failing to meet the legal basis of the consent.

One Head of DEFRA Water Quality is as bad as another the previous one claimed in his letter dated 16 April 2012:

- "The evidence available to me suggests that the original system was designed to pass forward 4.5 times dry weather flow before discharge though CSOs. These CSOs now discharge into the interceptor tunnel. I have looked at the permit, including the material that Mr Bennett sent you. I can see no attempt to mislead you and Mr Beard is correct in his statement flows in the permit are expressed in litres per second and not with reference to multiples of dry weather flow"

I have requested to see this evidence under the Environmental Information Regulations as yet it has not been provided only to say:
• “I do not agree that volumes pumped out of the interceptor tunnel back into the sewer for treatment should be included in the volumes that were discharged to sea via the long sea outfall as quoted in paragraph 72 of the Advocate General’s Opinion”

One wonders did he ever stop and think where the flows being returned came from, he has already told us DWF rather litres per second which must be passed forward before discharges to the tunnel are allowed. The fact is what is discharging into the tunnel and 4.5XDWF proves that fact it is not allowed and the return flows confirm that point and have to be taken into account. As it shows the system is not complying with the consent conditions. He goes on to say: -

• “I agree that the statements which you quote from the Agency appear to be incompatible with the view that the system operates at 4.5XDWF”

The next page is taken from the Advocate General’s Opinion showing he was completely misled, he states: -

• “71. When the amount of water collected in the Whitburn collecting system exceeds 4.5XDWF (15) the excess waste water is diverted into a storm interceptor tunnel which has a operational capacity of 7000 cubic meters”. “(15) The dry weather flow of a collecting system is the quantity of water collected in it in the absence of rainfall”

The information regarding the 4.5XDWF and the tunnel capacity is wrong, further the number of discharges are also wrong as you can see by the information contained in the further enclosures. The problem is, I can go on and on but this is what DEFRA want, they are quite prepared to string me along and continue with the paper chase but have no intention of complying with the Environmental Information Regulations. The UK’s responses to the many EIR requests show they only provide what information they want to provide, as you can see - although I was told they had provided all the information they held in 2012 I received a copy of the UK’s response to the EC reasoned opinion in May 2014 showing the spill rate was 6XDWF and the tunnel capacity was 14000cu.mts.
While the Aarhus Conventions intentions are a brilliant idea on paper in reality as you can see for a member of the public to apply for environmental information under the EIR from DEFRA it is a total waste of time and their intentions are that you will give up.

While the committee might not like me saying that, when you consider what the Advocate General said in his Opinion compared to what the actual evidence states, a member of the public has no chance in Court irrespective of the Court, the fact is DEFRA are quite happy to just string along the Committee. I think it is important that the Committee understand how important the difference between spilling at 4.5XDWF as opposed to 6XDWF is that it means that it is not storm water entering this tunnel but foul sewage and it is this that is being discharged from Whitburn which has no treatment other than screening. The situation is the Whitburn Case C – 301/10 went before the European Court of Justice and the Court decided against the UK, although the AG supported the UK. Our problem is that the evidence such as 4.5XDWF and 7000cu.mts also the discharge numbers were all incorrect. Then the problem is that the UK have submitted a proposal to correct the Whitburn system based on this flawed evidence. Under the EIR we have asked to be shown this proposal, both the UK and EC have refused, claiming regulation 12 saying it will affect international relations etc. There is no possible way that any member of the public could proceed to Court against DEFRA because they will stop at nothing to cover up their mistakes.

Regards

Bob Latimer
Dear Mr Latimer

Advocate General's Opinion

Thank you for your email, of 15 February to me and further email, of 16 February, to Chris Ryder. As already stated on previous occasions you should address all correspondence to me but I will only respond to points that I regard as substantively new. I have endeavoured to respond in time for your meeting this evening.

The conditions in the permit are not expressed in terms of Dry Weather Flow but rather litres per second which must be passed forward before discharges to the tunnel are allowed. These are the legal basis for the consent and would be used for assessing compliance. Dry Weather Flow is not relevant. The figure of approximately 4.5 times Dry Weather Flow is the average performance of the system and was clearly stated as such, at paragraph 10.2.1.5, of the Inspector’s report of the Public Inquiry published on 25 February 2002. I cannot explain why Dr John Hogger letter in 1999 quoted 6 times Dry Weather Flow. This illustrates the danger of talking in terms of multiples of Dry Weather Flow which is usually an approximation and is why discharge permits tend to be expressed in terms of absolute pass forward flows in litres per second. The average of 4.5 times Dry Weather Flow is used to describe the performance of the system as there is likely to be a range of multiples of Dry Weather Flow at different points in the system. For further details of this particular system you would have to approach the Environment Agency (the Agency).

I can confirm the permit states the tunnel should be of at least 15,661 cubic metres. As you say the 7000 cubic metres figure relates to the capacity exceeded before a discharge is made to sea in normal operating conditions. Your request for disclosure of our pleadings is being assessed separately, but I can confirm that we do ensure our pleadings are accurate and that we agree the capacity of the tunnel already exceeds 14,000 cubic metres. The mistake in the opinion is not material to the conclusion of the Advocate General that expenditure on additional capacity would be excessive given the environmental impact of the spills. Paragraph 48 of the Advocate General’s opinion shows that the 20 spill figure originated with the Commission and recognises that it has limitations and that a case by case assessment is necessary.
I have copied this letter to recipients of your emails.

Yours sincerely

Ed Beard
Urban Waste Water Treatment Policy
Water Quality
Defra

Direct Line 020 7238 5323
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20. The Commission (ARO, para. 5) identifies a misunderstanding on the part of my authorities over the term “total generated load” (which is not a term used in the Directive), and its relationship to “dry weather flow” (Reply to RO, para. 152). It is true that my authorities thought it possible that the Commission was using the term “total generated load” as a synonym for dry weather flow. It is accepted that this is not the case. This is not in itself a point of substance, since the response to the Reasoned Opinion of 15 June 2006 (hereafter the response to the RO) states (at para. 153):

“If the Commission is using the expression ‘total generated load’ to refer to all waste water collected (domestic and industrial waste water, and rainwater), my authorities would comment that... the Directive does not require collecting systems to have the capacity to collect and conduct for treatment the total load of rainwater together with the total generated load of domestic and industrial waste water” (emphasis added).

The Commission describes this as a “restrictive interpretation” which “highlights a key difference of interpretation”, and states that a combined system “must be designed to ensure that the waters collected are retained and conducted for treatment” (ARO, para 6). The point made above in the response to the RO wished account to be taken of the fact that CSOs are an intrinsic part of collecting systems. The Commission rightly acknowledges this in the ARO (para. 9). My authorities accept that it is necessary for collecting systems to have the capacity to conduct the total load of rainwater and other waste water for treatment if account is taken of the fact that some proportion of the total load of rainwater will be discharged via CSOs which are designed or maintained, taking into account the considerations mentioned in Annex I.A. Providing that CSOs are designed, constructed and maintained consistent with Annex I.A, this fact is consistent with the requirements of the Directive. What my authorities do not accept, and this is indeed a “key difference of interpretation” (ARO, para. 6), is that exceedance of an arbitrary “spill limit” by a particular CSO, currently fixed by the Commission at 20, leads to the conclusion that a collecting system is in breach of the requirements of the Directive.

21. The fact remains that dry weather flow (DWF) is one of the internationally used design criteria for collecting systems and CSOs, in that multiples of DWF are specified as minimum standards of dilution for discharge into receiving waters. As noted above, the 1995 Report found that

5 "Traditionally, most of the sewage systems in Europe are of the combined type..." Zabel, Milne & Mckay, Approaches adopted by the European Union and selected Member States for the control of Urban Pollution Urban Water 3 (2001), 25-32, at p. 25.
Area 2B, Ergon House, Horseferry Road London SW1P 2AL
Direct Line: 020 7238 5313
Email: chris.ryder@defra.gsi.gov.uk

To: Mr Robert Latimer
By email: robert@latimers.com

(No hard copy sent)

16 April 2012

Dear Mr Latimer

Thank you for your email to me of 22 February and your emails to Mr Beard of 6 and 10 February and 9 March. In line with the approach previously outlined to you, I am replying to you only on points that we have not addressed before.

The evidence available to me suggests that the original system was designed to pass forward around 4.5 times dry weather flow before discharge through the CSOs. These CSOs now discharge into the interceptor tunnel. I have looked at the permit, including the material that Mr Bennett sent you. I can see no attempt to mislead you and Mr Beard is correct in his statement flows in the permit are expressed in litres per second and not with reference to multiples of dry weather flow. As Mr Beard stated, you should approach the Environment Agency if you wish to discuss the detail around this.

The Advocate General’s Opinion does appear to confuse some of the figures which were put before the Court. Storage at Whitburn would have to be increased by 10,800 cubic metres rather than to 10,800 cubic metres. The UK has written to the Court to draw attention to this: it is not attributable to any statements by the UK.

I do not agree that volumes pumped out of the interceptor tunnel back into the sewer for treatment should be included in the volumes that were discharged to sea via the long sea outfall as quoted in paragraph 72 of the Advocate General’s Opinion.

I agree that the statements which you quote from the Agency appear to be incompatible with the view that the system operates at 4.5 times dry weather flow. I suggest you
approach the Agency to explain this discrepancy if it has not already been addressed in previous correspondence.

I do not consider that any of our pleadings in the case are wrong and it is therefore not necessary for me to contact the Commission as you suggest.

Please address future correspondence to Mr Beard and we will note its content but only respond to points which we consider to be substantively new.

Yours sincerely

Chris Ryder

Head of Water Quality
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, the excess waste water is diverted into a storm sewage interceptor tunnel which has an operational capacity of 7,000 m$^3$. 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.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of discharges</th>
<th>Volume discharged (m$^3$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>27 $^{16}$</td>
<td>542,070</td>
</tr>
<tr>
<td>2006</td>
<td>25</td>
<td>248,130</td>
</tr>
<tr>
<td>2007</td>
<td>28</td>
<td>478,620</td>
</tr>
<tr>
<td>2008</td>
<td>47</td>
<td>732,150</td>
</tr>
</tbody>
</table>

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 542,070m$^3$. 
Storm water/combined sewer overflow policy

21. The amount of foul sewage flowing to each of the three pumping stations is controlled by a series of CSOs. These are effectively low sided weirs with 500mm bar screens which do not operate unless the sewage flows to the sewage treatment works exceed a set amount. This amount is set to a formula based on the population served, the trade effluent discharges and the minimum pass forward flows (see table below). Included in the calculations is an allowance for surface water infiltration of 30%. There is a wetland nature reserve at Boldon, which was created in the 1950's, and drainage for surplus water from the area was connected into the foul sewer as this was the only available disposal route. The effect of this connection has been to extend the period of influence of heavy rainfall on the drainage system in the area. The Roker Ghyll, a small urban stream, is connected to the storm sewage interceptor tunnel (not the foul sewer). The effect of this has been to increase the volume of flow entering the tunnel.

<table>
<thead>
<tr>
<th>CSO</th>
<th>Dry Weather Flow - litres per second (l/s)</th>
<th>Overflow Setting litres per second (l/s)</th>
<th>Multiple of DWF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roker</td>
<td>33</td>
<td>195</td>
<td>5.9</td>
</tr>
<tr>
<td>Seaburn</td>
<td>52</td>
<td>349</td>
<td>6.7</td>
</tr>
<tr>
<td>Whitburn</td>
<td>19</td>
<td>129</td>
<td>6.8</td>
</tr>
</tbody>
</table>

22. These CSOs formerly discharged directly to the designated bathing beaches at Whitburn and Roker. Since 1995, these CSO's have been intercepted and are now connected to the storm sewage interceptor tunnel which collects and stores excess flows, and the Whitburn Steel storm pumping station.

23. The operational storage capacity of the storm sewage interceptor tunnel is set at 1,550m³ (of a total capacity of 14,000m³), to ensure sufficient storage capacity is available in the tunnel in the event of a "critical" storm. This is defined as a storm which is predicted to occur when a rainfall event of greater than 1 in 5 year return period occurs. An operational storage volume of 1,550m³ was chosen to minimise the risk of the storm sewage in the tunnel overflowing on to the beaches at Whitburn and Roker, due to the incoming flow exceeding the total storage volume plus the capacity of the pumps. It would be possible to delay the start of pumping storm sewage to sea until a greater proportion of the storage capacity in the tunnel was used up. However, this was tried as part of the risk assessment carried out when the scheme became operational in 1995. This resulted in a number of occasions when storm sewage overflowed on to the beaches, including some during the bathing season. A second study has recently been carried out which confirmed the 1,550m³ setting as being correct to prevent overflows except in a 1 in 5 year storm event.

24. For low volumes of storm sewage (ie amounts less than 1,550m³), or when the amount in the tunnel returns to 1,550m³, the contents of the storm sewage interceptor tunnel rejoin the sewerage system and are pumped to Hendon sewage works to receive treatment.

25. If this capacity is exceeded, screened (to a 6mm standard) storm sewage discharges are made from the Whitburn Steel storm pumping station, at a maximum pumping rate of 3,000 l/s, through the 1.2 km long sea outfall. Under most storm conditions the storm
carry any storm sewage on to nearby beaches. Also the storm sewage in the interceptor tunnel is diluted by surface water from the Roker Ghyll, and is screened down to 60mm in one dimension before being pumped out through the long sea outfall.

24. The current storm sewage discharge consent to Northumbrian Water Limited for the Whithburn Steel Storm Sewage Pumping Station sets the storage threshold of the interceptor tunnel at 2,000 m³, and requires that the company operates the in-system pumping facility (used to return flows collected in the interceptor tunnel to the collecting system for forwarding for treatment at Hendon treatment works) to the maximum extent practicable to prevent and minimise discharges to sea.

25. The actual amount of storm sewage collected in the tunnel is returned to the collecting system for treatment at Hendon, or stored before screened and pumped discharges are made to sea is likely to be more because the sewerage company has recently refined its procedures so that they now look to store approximately 7,000 m³ of storm sewage in the tunnel before making a discharge to sea. We consider this demonstrates that my authorities are using best technical knowledge to maintain this collecting system.

Account taken of urban waste water volumes and characteristics

26. The rate of dry weather flow (which includes the flow contributions from Seaham, Roker and Whithburn pumping stations) in the collecting system is 103.8 litres/sec, and the combined sewer overflows only operate when the dry weather flow is exceeded by between 5.9 and 6.3 times, we consider the collecting system takes account of volumes of urban waste water.

27. No discharges are made through the long sea outfall unless more than 2,000 m³ of storm water is in the interceptor tunnel. This represents slightly more than 14% of the total tunnel capacity of 14,000 m³. This storage threshold was set to leave enough capacity in the tunnel to attenuate any intense localised storms in the catchment that may otherwise have caused the high-level overflows in the interceptor tunnel to discharge directly onto the beaches at Whithburn and Roker, to prevent back flooding of properties, and to provide sufficient capacity in the event of a critical storm. Again we consider this shows that account was taken of volumes and characteristics of urban waste water in the collecting system.

Conclusion

28. My authorities consider the UK fully complied with Articles 3, 4 and Annex 1 (A) of the Urban Waste Water Treatment Directive concerning the collecting and treatment system which serves the Whithburn area and associated agglomeration by the deadline of 31 December 2000.
Thank you for your letter dated 20 November addressed to Malcolm Helm. Having considered all of your questions, I have concluded that they have been answered previously with the exception of the points addressed below. The points raised when we spoke on 7 December are also addressed below.

With regard to the first paragraph of your letter, I would like to clarify the situation regarding Richard Cresswell’s remarks concerning Malcolm Helm. Malcolm has many responsibilities within the Agency and your continual demands on his time were causing delays in other work that he is required to progress as a matter of urgency.

My comments on the points raised in your letter that have not previously been answered are:

**Letter of 7 January 1998:**

1. & 2. The peak dry weather flow of foul sewage in the foul sewers is in the order of 1.5 times the nominal dry weather flow figure. The nominal dry weather flow figure is calculated to take account of variations in the dry weather flow.

**Letter of 28 January 1998:**

3. The total storage capacity of the interceptor tunnel is 14000 cubic metres.

5. As you may recall, on one of Malcolm Helm’s visits to your home he corrected the figures quoted in section (5) of the letter of 28 January 1998. Furthermore, Malcolm gave you a note of the amendment and explained that he had mistakenly transcribed the figures when writing the letter.

As you appear to have mislaid this information, it might assist you to annotate your copy of the letter as follows:

<table>
<thead>
<tr>
<th>DWF (l/sec) in sewer</th>
<th>Formula A (nominal 6 X DWF) l/sec</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whitburn</td>
<td>129</td>
</tr>
<tr>
<td>Seaburn</td>
<td>343</td>
</tr>
<tr>
<td>Roker</td>
<td>200</td>
</tr>
</tbody>
</table>
NOTES IN SUPPORT OF APPLICATION FOR A
VARIATION OF EXISTING CONSENT 245/1031
AT WHITBURN STEEL PUMPING STATION
JANUARY 1999

The application for a variation to the existing consent is in respect of the following requirements:

1. Emergency overflow using the pumped discharge from Whitburn Steel when either Roker, Seaburn or Whitburn Bents Pumping Stations, or a combination of the same, are inoperable due to electrical or mechanical failure of the station(s) or when there is a failure of a rising main downstream, or

2. Pumped discharge from Whitburn Steel during planned shutdown of the sewerage system downstream.

The pumping stations (Seaburn, Roker, and Whitburn Bents) downstream are equipped with telemetry, facilities for a standby generator and access for a tanker. The operation of the Whitburn Steel discharge under condition (1) above is liable to be very infrequent.

The likelihood of Whitburn Steel operating during a planned maintenance shutdown (condition 2 above) is also minimal, as the work will be programmed to take place through a dry spell based on Meteorological Office forecasts. The timing of such planned work would be agreed in advance with the Environment Agency.

The dry weather flow calculations provided in support of the 13 August 1992 application remain valid. The combined sewer settings have been checked and agree with the formula A calculations submitted also. They are as follows:

**Whitburn CSO (NZ 4097 6141)**

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population served</td>
<td>7000</td>
</tr>
<tr>
<td>Water usage</td>
<td>180 l/h/d</td>
</tr>
<tr>
<td>Infiltration</td>
<td>30%</td>
</tr>
<tr>
<td>Trade Effluent</td>
<td>Nil</td>
</tr>
</tbody>
</table>

\[
DWF = 7000 \times 0.18 \times 1.3 \\
= 1638 \text{ m}^3/\text{d} \text{ (19.0 l/s)}
\]

**Formula A**

\[
1638 + 1.36 \times 7000 \\
= 11158 \text{ m}^3/\text{d} \text{ (129 l/s)}
\]

**Seaburn P.S. (NZ 4060 6019)**

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population served</td>
<td>18349</td>
</tr>
<tr>
<td>Water usage</td>
<td>180 l/h/d</td>
</tr>
<tr>
<td>Infiltration</td>
<td>30%</td>
</tr>
<tr>
<td>Trade Effluent</td>
<td>273 m^3/d</td>
</tr>
</tbody>
</table>
DWF = (18349 x 0.18 + 273) x 1.3
= 4649 m$^3$/d (53.8 l/s)

Formula A = 4649 + (1.36 x 18349) + 2 x 273
= 30149 m$^3$/d (349.0 l/s)

Roker P.S. (NZ 4073 5922)

Population served 10000
Water usage 180 l/h/d/
Infiltration 30%
Trade Effluent 265 m$^3$/d

DWF = (10000 x 0.18 + 265) x 1.3
= 2685 m$^3$/d (31.0 l/s)

Formula A = 2685 + (1.36 x 10000) + 2 x 265
= 16815 m$^3$/d (194.6 l/s)

The storage capacity in the interceptor tunnel and the Whitburn Steel pumping station wet well before the duty pump will start ("the operational storage capacity") is 1550m$^3$. During dry weather conditions the storage afforded from empty at the pumping stations is:

Seaburn P.S. Failure 8.0 hours
Roker P.S. Failure 13.9 hours
Failure of both 5.1 hours

We will however have the option during these conditions to override the automatic operation of the Whitburn Steel pumps and make full use of the 14,000 m$^3$ storage available in dry weather conditions. This would obviously increase the above hours of storage by a factor of 9.
Mr R L Latimer  
Shell Hill  
Bents Road  
Whitburn  
Tyne and Wear  
SR6 7NT

Dear Mr Latimer

WHITBURN PUMPING STATION

Further to your recent telephone conversation with Garry Greenlay, 7 April 1999, I have been asked to provide you with the following information:

1. The letter written by John Burns, Northumbria Area Environment Planning Manager, which was published in The Journal was in response to an article printed in The Journal on 1 April 1999. This article contained a number of significant inaccuracies, particularly regarding the primary role of the Whitburn Storm Sewage Pumping Station. The intention of the letter was to provide an accurate and balanced explanation of the function of the pumping station and associated sewerage system.

2. Whitburn Pumping Station is part of the sewerage system designed to serve a local population of around 30,000 whilst protecting local beaches for the purposes of compliance with the EC Bathing Waters Directive. Details of the number of residents served by each leg of the sewer is provided by Northumbrian Water Limited in their latest application, a copy of which has been sent to you.

3. The foul sewer will discharge into the storm interceptor sewer when flows exceed six times dry weather flow. The storage capacity of the storm interceptor sewer remains unchanged at 14,000 m³; it has not been increased from 7,500 m³ to 14,000 m³. The consent states that there should be at least 7,500 m³ capacity available at any time, to provide adequate protection under a variety of storm conditions scenarios.

4. The existing consent for Whitburn Storm Sewage Pumping Station was issued in 1992 by the National Rivers Authority. At that time, it was considered that Section 89 of the Water Resources Act, 1991, would cover emergency discharges from the station. However, subsequent advice indicates that an additional condition is required which includes provision for emergency discharges in specified circumstances. The current application from Northumbrian Water Limited is for the inclusion of such an additional condition.

Cont/d....
Dear Ms Toop

Re: Decision V/9n concerning compliance by the United Kingdom with its obligations under the Aarhus Convention.

Being both a party concerned and a party involved in this progress report I feel it is important that all involved and in particular the Aarhus Convention Committee see what it is really like being a member of the public and having to deal with a real live case involving the UK authorities and the European Court of Justice. I am sorry to keep coming back to statements like: - “access to environmental information” – “public participation in environmental decision making” – “access to justice” - while to the public this sounds like steps in the right direction, in practice it is nothing of the kind, as I will demonstrate below.

The position at the moment is that DEFRA have put forward a proposal to the EC about how they intend to correct the Whitburn sewerage system, something they had to do following the European Court decision that went against them. Neither DEFRA or the EC will allow me to see this proposal and as I will demonstrate below, you will see why. I will explain with the help of correspondence I enclose: -

1. Page 11 taken from the European Court of Justice Judgement I refer to paragraph 78: –

"Second, it is to be noted that according to a study carried out in 2010 it would be possible from a technological point of view, to reduce the number of waste water discharges from the Whitburn collecting
system by enlarging the interceptor tunnel that already exists, a fact which has not been contested by the United Kingdom” – Below you will see why the UK did not want to contest it.

2. I now want you to look at the UKs response to the 2009 EC Reasoned Opinion paragraphs 57, 58 and 59: -

“57. In any event, the Whitburn scheme was designed not just for bathing waters. The use of screening and long sea outfall minimises the effect of discharges on the coastal waters in the area”

This statement beggars belief as we have all suspected that the Whitburn system was designed to spill anything that went into it. This is the first I have heard of this but it shows the Whitburn system was built to discharge screened sewage into the sea, not just storm water and this fact never came out at the Public Inquiry.

“58. There is little or no land available in the vicinity of the Whitburn interceptor tunnel and it is extremely unlikely that a solution could be found to increase the tunnel’s capacity sufficiently enough to achieve 20 spills per annum” - This is not what the Court judgement is telling us, this paragraph shows the UK are contesting it and even more as you will see: -

“59. Even if such a scheme were to be technically feasible, the construction costs alone would be excessive in that they could run to an estimated one hundred and fifty million £ sterling. This would not include the financial loss to the local economy that would be caused by the disruption or associated
operating and carbon costs from greatly increased pumping requirements. The considerations in this and the foregoing paragraph indicate that a ‘solution’ involving achievement of a 20 spill standard would give rise to excessive cost, in terms of expenditure and disruption to the life of the urban community, without ensuring commensurate environmental benefit.” The Court says the UK have not contested this, it does not look that way to me when you read their response.

3. I now want you to go back to Court judgement 2012 and read paragraphs 80, 81 and 82:

“80. Although the improvement in water quality appears marginal and, as the UK contends, Directive 76/160 is complied with, a fact which can be taken into account in the general examination of the conditions for applying the concept of BTKNEEC, it must be stated that the costs of such an enlargement of the tunnel are not mentioned at the time, either in the observations of the parties or in the reports and studies carried out” - This is just not true; how can such a statement be made when the 2009 UK response makes direct reference to these points.

4. “81. Thus, the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained” – Once again, I just cannot understand this we are told they were presented with all the correspondence so would have a copy of all the responses to the reasoned opinions.

5. “It follows that the UK has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were disproportionate to the improvement in the state of
the environment” – This seems a extremely strange legal standard to me when you consider they chose the cheapest option not the BTKNEEC when it was built and commissioned in 1996.

6. The next sheet is page 4 taken from the minutes of a meeting held in 1992 involving the so-called best technical knowledge and as you can see: -

“20. The total estimated average yearly discharge of the sea outfall was 225,000cumts, approximately two thirds of which would be during the bathing season”

“22. The Seaburn scheme was different in principle from North Tyneside in that there was no storm return facility. Storm water would be stored in the new interceptor sewer until there was sufficient capacity to actuate the outfall pumps” – There was no return facility designed into the Whitbrun system as there was no capacity in the downstream sewerage system and here lies the problem, but the UK don’t want to admit it.

“26. The pumping station would include 6mm screening and have 2 duty and 1 standby pumps feeding the new outfall. There was no storm return facility. The pumping station was estimated to operate 20-30 times per year, but strategic operations would be introduced for purging with portable water” – How could the Court not have been made aware that there was no return facility designed into the Whitburn system? How could the Court not be aware that the Whitburn system was designed to spill at 20 to 30 years per annum? How is it we are now being told to meet those standards the cost will be £150 million when it only
cost £15 million in the first place. How was it that the Court were not aware of the proposed cost when it is contained in the reasoned opinion.

7. Next sheet is a page taken from the 1993 Whitburn discharge application form: -

"21a) State dry weather flow to pumping station/sewer - NIL

"21b) State flow at which storm discharge will commence – Maximum pump rate 3.0cumts/sec

"22. Expected frequency of operation – by modelling (21 hours) per annum.

My calculation of this is 3cu.mts multiplied by 60 = 180cu.mts/min multiplied by 60 = 10,800cu.mts multiplied by 21hours = 226,800cu.mts per year (corresponds roughly with the figure referred to in the minutes)

8. Next sheet is a page taken from the 1999 discharge application form for Whitburn: -

"22. Please state the maximum quantity it is proposed to discharge in any one day – 259,200cu.mts.

This licence allows more to be discharged in one day than the system was designed to spill in a year, this figure seems to have been conveniently overlooked by the so-called best technical knowledgeable people
While the thinking behind the Aarhus Convention proposals and the public perception is that the UK and the EC had adopted these good intentions, in reality the adopting of the Environmental Information Regulations has made the situation even worse as the authorities use the opt out clauses to their advantage as I will show. I will further demonstrate this by providing two further emails, one from the UK and one from the EC, to show, while we may argue about cost of going to Court, looking at the correspondence above it would be a none starter for an ordinary member of the public.

It cannot be denied that there is something seriously wrong here at Whitburn, yet the authorities claim under the EIR that there was an overriding interest that prevented disclosure under the public interest test - this only goes to show the Convention has not been adopted. We have a situation here where a Court Decision has been made based on flawed evidence in the case of Whitburn so it must be that the intentions to correct this system are also based on that flawed evidence. You can see by the UK’s letter dated 29 December 2014 that the UK authorities are quite happy to play with words and while the Aarhus Conventions intentions are in good spirit the same cannot be said for the authorities.

Regards

Bob Latimer
while the volume for 2009 was 762,300 m³. The Commission, basing its observations on the frequency of those discharges and their intensity, has clearly demonstrated that, both before and after the expiry of the period laid down by the additional reasoned opinion, they were a normal occurrence, as such a number of discharges cannot be linked to exceptional circumstances. Indeed, the United Kingdom does not contend in its observations that those discharges are exceptional in nature.

Second, it is to be noted that according to a study carried out in 2010 it would be possible, from a technological point of view, to reduce the number of waste water discharges from the Whitburn collecting system by enlarging the interceptor tunnel that already exists, a fact which has not been contested by the United Kingdom.

So far as concerns the costs required to be incurred and the benefits obtained, that study shows that an improvement of 0.3% in respect of the quality of the receiving waters could be achieved by the tunnel enlargement works, on the basis of 20 discharges per year.

Although the improvement in water quality appears marginal and, as the United Kingdom contends, Directive 76/160 is complied with, a fact which can be taken into account in the general examination of the conditions for applying the concept of BTKNEEC, it must be stated that the costs of such an enlargement of the tunnel are not mentioned at any time, either in the observations of the parties or in the reports and studies carried out.

Thus, the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained.

It follows that the United Kingdom has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were disproportionate to the improvement in the state of the environment.

Accordingly, the Commission was right in finding that the collecting system put in place in Whitburn does not meet the obligations laid down in Article 3 of, and Annex I(A) to, Directive 91/271.

London

In the case of the agglomeration of London, it is not in dispute, in accordance with the contentions of the United Kingdom itself, that, at the end of the period laid down in the additional reasoned opinion, that agglomeration had neither treatment plants at Beckton, Crossness and Mogden performing the secondary treatment of all the urban waste water entering the collecting system, in accordance with Articles 4(1) and 10 of Directive 91/271, and guaranteeing that the discharges from them satisfied the requirements of Annex I(B) thereto nor collecting systems at Beckton and Crossness with a sufficient capacity, in accordance with Article 3 of the directive.

The Commission, relying on a TTSS report of February 2005, observes that there were approximately 60 waste water discharges from storm water overflows in London per year, even in periods of moderate rainfall; untreated water having a volume of several million tonnes was thus discharged into the River Thames every year.

So far as concerns the treatment plants of the collecting system for London, that report shows that their capacity is sufficient in dry weather, but not sufficient in the slightest in the case of rainfall.

The United Kingdom does not dispute the facts relied upon by the Commission and observes
assessed as such. In constructing and designing the improvements to the collecting system, my authorities considered the impacts of the discharges on the receiving bathing waters. The tunnel was an important advance in its own right in limiting pollution from CSOs, which previously discharged direct to the beach or through short outfalls. It is worth noting that my authorities consider it is important that the tunnel retains capacity to store further rain, by discharging through the long sea outfall. This is because if the tunnel gets too full there would be instantaneous discharge through high level overflows onto the beach, which would be much worse for the environment and bathing water compliance. Therefore the balance struck by pumping out to sea to avoid risk of more polluting discharge inshore is an important part of limiting pollution of receiving waters.

56. The Commission considers that spill rates of between 56 and 91 spills per year and annual discharge volumes of 359,640 m³ and 561,240 m³ of untreated urban waste waters does not comply with Art 3 and Annex LA of the Directive, particularly given the close vicinity of designated bathing waters in Whithurn and Seaburn (ARO, para 34). However, the Commission cites figures for the volume of discharge without putting the figures in context. For the 3 year period 2005-2007, CSO at Whithurn only discharged 1.6% of the total collected volume of treated sewage. A reference in isolation to the percentage spillage of total collected volume is insufficient to establish a breach of the Directive. For one thing, there is no automatic correlation between percentage of spillage and environmental impact, and in any event, all circumstances have to be taken into account, such as the dilution achieved before spills occur. It is to be noted that the 1995 Report indicates that in Germany overflows from CSOs typically correspond to “between 0.5% and 2% of the annual polluting load” (1995 Report, page 121). In this case, the percentage spillage tends to show good practice, not the contrary.

57. The Commission suggests that the fact that the Whithurn bathing waters complied with the standards in the Bathing Water Directive cannot be relied upon in support of the fact that compliance has been ensured with the Directive. As explained above (par. 35), my authorities consider it is legitimate to consider positive indicators of water quality like compliance with standards under the Bathing Water Directive in assessing pollution of receiving waters. A detailed coastal dispersion modelling report shows that the current Whithurn discharge has little or no impact on the Whithurn bathing waters or other surrounding coastal waters. This is reflected by the excellent bathing water results observed at the Whithurn bathing waters since

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11 For the 3 year period 2005-2007, Hendon sewage treatment works treated a total of 69 million m³ of sewage, during which time Whithurn discharged 1,139,220 m³ of storm sewage. This represents only 1.6% of the total collected volume of treated sewage.
the Whitburn system was installed. My authorities have also assessed current performance against the revised Bathing Water Directive. Both Whitburn bathing waters are predicted to comply with the revised Directive's 'excellent' standard. My authorities believe that their chosen solution of the provision of storage, screening and a long sea outfall goes further to protect the bathing waters at Whitburn than would be achieved by the Commission's proposed spill frequency of 20 spills per annum. Finally, it is worth noting that, despite the Commission's view as to the relevance of bathing water compliance to Directive compliance, the Commission itself emphasises the close proximity of the Whitburn and Seaburn bathing waters in expressing the view that my authorities are in breach of the Directive (ARO para 34). In any event, the Whitburn scheme was designed not just for bathing waters. The use of screening and a long sea outfall minimises the effect of discharges on the coastal waters in the area.

58. There is little or no land available in the vicinity of the Whitburn interceptor tunnel and it is extremely unlikely that a solution could be found to increase the tunnel's storage capacity sufficiently enough to achieve 20 spills per annum. This would mean that alternative solutions would have to be sought by either increasing storage, or replacing combined sewerage with separate systems back within the sewerage catchment. The sewerage network serves a major urban and suburban area to the east of and north east of Whitburn. It is estimated that any solution within the catchment area would require major work across the area over several years, possibly over 15 years. This would cause massive disruption to transport, the economy and people's quality of life within the Sunderland area.

59. Even if such a scheme were to be technically feasible, the construction costs alone would be excessive in that they could run to an estimated one hundred and fifty million £ sterling. This would not include the financial loss to the local economy that would be caused by the disruption or the associated operating and carbon costs from greatly increased pumping requirements. The considerations in this and the foregoing paragraph indicate that a "solution" involving achievement of a 20-spill standard would give rise to excessive cost, in terms of expenditure, and disruption to the life of the urban community, without ensuring a commensurate environmental benefit.

60. The Commission also draws upon the fact it has continued to receive regular complaints of sewage debris littering the beaches around Whitburn (ARO para 35). As regards the sewage litter, the complaints of sewage litter have been investigated by my authorities and do not emanate from the Whitburn outfall.
61. During the period 2006 – 2008, 10 sewage related incidents were reported to the Environment Agency for the Whitburn area. This is a low number of complaints given the popularity of the Whitburn beaches and the three year period involved. The Environment Agency is of the view that there is no significant problem and that if there was a problem with sewage related debris it would be receiving a large number of complaints from various independent sources, which is not the case. Further, the Environment Agency is of the view that the reported incidents at Whitburn do not arise from the Whitburn discharge, which is screened to 6mm to remove any sewage debris. The Environment Agency’s view is supported by the fact that dispersion modelling indicates that it is very unlikely that the Whitburn discharge would impact upon the Whitburn beaches. It is thought to be more likely that any sewage related debris found at Whitburn comes from the Tyne estuary.12

62. The Commission's contention that the discharges from Whitburn demonstrate a breach of the Directive results from two points. The first is based on its adoption of the 20 per annum spill limit. Such a spill limit is arbitrary and inappropriate, for the reasons given in paras. 11 and 12 of this response. Exceedance of this limit has little or no predictive value as regards adverse environmental impact on receiving waters. The second is its unsubstantiated assumption that an annual overflow level of 1.6% of total collected volume indicates that the design of the collecting system or CSO is incompatible with the Directive. My authorities do not accept that the Commission has demonstrated any breach of the Directive in respect of Whitburn.
<table>
<thead>
<tr>
<th>Item</th>
<th>Discussion</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>The total estimated average yearly discharge of the sea outfall was 225,000 m³, approximately two thirds of which would be during the bathing season.</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>After pumping, the outfall would be purged with potable water. This was a strategic operational requirement which NWL did not think would affect the consent and ensured that the outfall remained “fresh”.</td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>The Seaburn scheme was different in principle from North Tyneside in that there was no storm return facility. Storm water would be stored in the new interceptor sewer until there was sufficient capacity to actuate the outfall pumps.</td>
<td>NWL</td>
</tr>
<tr>
<td>23.</td>
<td>The existing outlets would only operate in the event of a storm greater than 1 in 5 years.</td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>RW would write to NRA explaining the operation of the Seaburn SSO’s.</td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>The existing SSO’s at Roker, Seaburn and Whitburn, together with the Whitburn Colliery Sewer would be connected into the new system and discharge to the sea via the new Whitburn Steel pumping station.</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>The pumping station would include 6 mm screening and have 2 duty and 1 standby pumps feeding the new outfall. There was no storm return facility. The pumping station was estimated to operate 20–30 times per year, but strategic operations would be introduced for purging with potable water.</td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>The existing overflow facilities for which the outfalls would be abandoned and replaced with wall flaps, would generally only operate in the event of a storm greater than 1 in 5 years or if there was a breakdown and the system had filled up.</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>A screened relief discharge from the pumping station would be provided to protect the equipment in the event of a breakdown.</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>The system would discharge at certain rates when the pumps were running:–</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. When the system was full to operating capacity.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. When HWL decided to use the pumps for strategic reasons.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. For purging the systems.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>33.4 HT advised that consent was not required for operation in a real emergency.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>33.5 SF advised that the existing overflows would operate on average 1 in 5 years and only when the new system failed, excepting a major pump failure.</td>
<td></td>
</tr>
</tbody>
</table>

Ref: N20024
FOR STORM AND EMERGENCY DISCHARGES AND SURFACE WATER SEWERS

State the type of discharge. Tick one or more boxes as appropriate.

- Storm tanks
- Storm overflow from sewer
- Storm overflow from pumping station
- Emergency overflow from sewer
- Emergency overflow from pumping station
- Surface Water
- Other

If other, please give further details:

21

<table>
<thead>
<tr>
<th>a) State dry weather flow to pumping station in sewer</th>
<th>Kil m³/dy</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) State flow at which storm discharge will commence</td>
<td></td>
</tr>
</tbody>
</table>

22

- Expected frequency of operation: 70 by modelling (over 21 hours per annum)

23

- State volume of storm tank(s): m³

24

- State volume of wet well: STORM SEWAGE STORAGE

25

- What provisions have been made to raise alarms? (e.g. telemetry)

26

- What facilities have been provided to prevent the discharge of gross solids? (For screens, give bar spacing or aperture.) 6mm Screens

27

- What provisions have been included to deal with:
  - a) power failure?
  - b) mechanical breakdown?
  - c) rising main failure?

28

- What facilities have been provided for flow measurements?

29

Are there any other factors to be taken into account?

WILL ALSO ACT AS EMERGENCY OVERFLOW FOR BOTH TO SEA BURN AND ROCKER PUMPING STATIONS IN EVENT OF ELECTRICAL OR MECHANICAL FAILURE OF RISING MAINS.
2 DETAILS OF DISCHARGE(S)

2.1 State the nature of the discharge(s) (see note i and ii) - tick one or more boxes as appropriate:
- Sewage Effluent - volume of 5 cubic metres per day or less
- Sewage Effluent - volume greater than 5 cubic metres per day (complete annexe 1)
- Sewage Effluent discharged under storm or emergency conditions (complete annexe 2)
- Cooling Water (complete annexe 3)
- Trade Effluent (including site drainage) (complete annexe 3)
- Others (please specify)

Foul sewage discharged during planned maintenance periods after operational volume is used up. Groundwater admitted with sewage during this and other periods.

2.2 Please state the maximum quantity it is proposed to discharge in any one day [269200 m³/day].
Briefly state how this figure was calculated (see note ii).

Assumed 5000 litres/second is discharged over fall 24 hours. It is highly unlikely that this volume will be discharged, as planned works will be timed to coincide with a period of dry weather using Met Office forecasts, and full use will be made of in-house storage and pumping in emergency situations.

2.3 a) Indicate proposed means of discharge - tick as appropriate and show on plan:
(for 1, 2 & 3 please state dimensions below)

1. Pipe
2. Channel
3. Culvert
4. Borehole
5. Well
6. Soakaway
7. Sub-Irrigation System
8. Combination of 6 & 7
9. Other (please specify below)

b) National Grid Reference(s) of point(s) of discharge (see note iii).

[42066115] (please indicate on accompanying plans)

2.4 a) The Agency will normally require adequate provision for the taking of samples of the discharge in a safe and convenient manner at any time. Please indicate the means proposed (see note iv) - tick as appropriate and show on plan:

At the outlet
At a manhole or sampling chamber
Other (please specify) FROM PUMPING STATION WET WELL.

b) National Grid Reference(s) of sampling point(s). (If different from 2.3 b) above)

[please indicate on accompanying plans]

c) What flow measurement facilities will be provided (see note v)?
Please give details.

Flow measurement will be based on pumping rate and duration.
Dear Ms Toop

Re: V/9n - In reply to the DEFRA response dated 29 December 2014 concerning compliance by the UK with its obligations under the Aarhus Convention.

Sorry this is late but I have just found it had not gone from my outbox to you.

With reference to the UK’s response in their letter dated 29 December 2014. I refer to the item England and Wales with reference to paragraphs 3, 4 and 5 in relation and comparison to my Case C – 301/10. I was not allowed to participate in this case although, under the Aarhus Convention, I believed I had a right to so. I was also not allowed to contact the EJEU to inform them that the Advocate General’s Opinion was seriously flawed.

While, as you can see, I am told the UK authorities take their obligations before the Court of Justice of the European Union very seriously this is not what I have found. I find it most odd that it appears the UK authorities consider they don’t have to provide evidence on the same basis as being under oath. You can see below the effects of such actions where, in my case, the UK failed to tell the truth to the EJEU. Although the EJEU found in my favour, the outcome, which I can only demonstrate by saying, putting it mildly, was classed as a minor offence instead of being jailed for life.

Regards

Bob Latimer
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, the excess waste water is diverted into a storm sewage interceptor tunnel which has an operational capacity of 7,000 m$^3$. 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.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of discharges</th>
<th>Volume discharged (m$^3$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>27 $^{16}$</td>
<td>542,070</td>
</tr>
<tr>
<td>2006</td>
<td>25</td>
<td>248,130</td>
</tr>
<tr>
<td>2007</td>
<td>28</td>
<td>478,620</td>
</tr>
<tr>
<td>2008</td>
<td>47</td>
<td>732,150</td>
</tr>
</tbody>
</table>

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 542,070 m$^3$. 

I - 15
78. More specifically, the United Kingdom stresses the fact that the quality of the waters into which the discharges are made has not suffered any adverse effect as a result of the discharges themselves, a fact attested to also by the fact that the waters along the local beaches have always complied with the standards laid down by European Union law for bathing waters.  

79. 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.

2. Assessment

80. In order to determine whether the United Kingdom has failed to fulfil an obligation in relation to the situation at Whitburn, I shall base my analysis on the two-stage test which I proposed above.

81. As regards, to begin with, the non-exceptional nature of the discharges of untreated water, the Commission has, in my view, provided sufficient evidence of this. As described above and as, moreover, remains undisputed by the United Kingdom, despite an improvement in the situation in recent years, the Whitburn collecting system continues regularly to discharge untreated water into the environment. As I have already pointed out, it is not possible to specify the number of discharges which marks the absolute boundary between exceptional and recurring events: the Commission, as we have seen, frequently refers to the figure of 20 discharges; furthermore, a report commissioned by the UK Government on the situation in London concluded that the reasonable figure was an even lower limit, equivalent to 12 discharges over the course of a year. In any event, regardless of the model adopted, on expiry of the time-limit laid down in the reasoned opinion, the situation at Whitburn was without doubt characterised by discharges the number and intensity of which are indicative of an event which is recurring and certainly not occasional. As shown in the table reproduced in point 72, between 2006 and 2008, there were between 25 and 27 discharges every

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19 The TTSS report, discussed at points 90 et seq below.
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 increased 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
Storm water/combined sewer overflow policy

21. The amount of foul sewage flowing to each of the three pumping stations is controlled by a series of CSOs. These are effectively low sided weirs with 500mm bar screens which do not operate unless the sewage flows to the sewage treatment works exceed a set amount. This amount is set to a formula based on the population served, the trade effluent discharges and the minimum pass forward flows (see table below). Included in the calculations is an allowance for surface water infiltration of 30%. There is a wetland nature reserve at Boldon, which was created in the 1950s, and drainage for surplus water from the area was connected into the foul sewer as this was the only available disposal route. The effect of this connection has been to extend the period of influence of heavy rainfall on the drainage system in the area. The Roker Ghyll, a small urban stream, is connected to the storm sewage interceptor tunnel (not the foul sewer). The effect of this has been to increase the volume of flow entering the tunnel.

<table>
<thead>
<tr>
<th>CSO</th>
<th>Dry Weather Flow - litres per second (l/s)</th>
<th>Overflow Setting litres per second (l/s)</th>
<th>Multiple of DWF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roker</td>
<td>33</td>
<td>195</td>
<td>5.9</td>
</tr>
<tr>
<td>Seaburn</td>
<td>52</td>
<td>349</td>
<td>6.7</td>
</tr>
<tr>
<td>Whitburn</td>
<td>19</td>
<td>129</td>
<td>6.8</td>
</tr>
</tbody>
</table>

22. These CSOs formerly discharged directly to the designated bathing beaches at Whitburn and Roker. Since 1995, these CSO's have been intercepted and are now connected to the storm sewage interceptor tunnel which collects and stores excess flows, and the Whitburn Steel storm pumping station.

23. The operational storage capacity of the storm sewage interceptor tunnel is set at 1,550m³ (of a total capacity of 14,000m³), to ensure sufficient storage capacity is available in the tunnel in the event of a 'critical' storm. This is defined as a storm which is predicted to occur when a rainfall event of greater than 1 in 5 year return period occurs. An operational storage volume of 1,550m³ was chosen to minimise the risk of the storm sewage in the tunnel overflowing on to the beaches at Whitburn and Roker, due to the incoming flow exceeding the total storage volume plus the capacity of the pumps. It would be possible to delay the start of pumping storm sewage to sea until a greater proportion of the storage capacity in the tunnel was used up. However, this was tried as part of the risk assessment carried out when the scheme became operational in 1995. This resulted in a number of occasions when storm sewage overflowed on to the beaches, including some during the bathing season. A second study has recently been carried out which confirmed the 1,550m³ setting as being correct to prevent overflows except in a 1 in 5 year storm event.

24. For low volumes of storm sewage (ie amounts less than 1,550m³), or when the amount in the tunnel returns to 1,550m³, the contents of the storm sewage interceptor tunnel rejoin the sewerage system and are pumped to Hendon sewage works to receive treatment.

25. If this capacity is exceeded, screened (to a 6mm standard) storm sewage discharges are made from the Whitburn Steel storm pumping station, at a maximum pumping rate of 3,000 l/s, through the 1.2 km long sea outfall. Under most storm conditions the storm
carry any storm sewage on to nearby beaches. Also the storm sewage in the interceptor tunnel is diluted by surface water from the Roker Ghyl, and is screened down to 6mm in one dimension before being pumped out through the long sea outfall.

24. The current storm sewage discharge consent to Northumbrian Water Limited for the Whitburn Sewer Storm Sewage Pumping Station sets the storage threshold of the interceptor tunnel at 2,000 m$^3$, and requires that the Company operates the on-site pumping facility (used to return flows collected in the interceptor tunnel to the collecting system for forwarding for treatment at Heaton treatment works) to the maximum extent practicable to prevent and minimise discharges to sea.

25. The actual amount of storm sewage collected in the tunnel is returned to the collecting system for treatment at Heaton, or stored before screened and pumped discharges are made to sea is likely to be more because the sewage company has recently refined its procedures so that they now look to store approximately 7,000 m$^3$ of storm sewage in the tunnel before making a discharge to sea. We consider this demonstrates that my authorities are using best technical knowledge to maintain this collecting system.

Account taken of urban waste water volumes and characteristics

26. The rate of dry weather flow (which includes the flow contributions from Seaburn Roker and Whitburn pumping stations) in the collecting system is 103.8 litres/sec and the combined sewer overflows only operate when the dry weather flow is exceeded by between 3.9 and 6.8 times, we consider the collecting system takes account of volumes of urban waste water.

27. No discharges are made through the long sea outfall unless more than 2,000 m$^3$ of storm water is in the interceptor tunnel. This represents slightly more than 14% of the total tunnel capacity of 14,000 m$^3$. This storage threshold was set to leave enough capacity in the tunnel to accommodate any intense localised storms in the catchment that may otherwise have caused the high-level overflows in the interceptor tunnel to discharge directly onto the beaches at Whitburn and Roker, to prevent back flooding of properties, and to provide sufficient capacity in the event of a critical storm. Again we consider this shows that account was taken of volumes and characteristics of urban waste water in the collecting system.

Conclusion

28. My authorities consider the UK fully complied with Articles 3, 4 and Annex I(A) of the Urban Waste Water Treatment Directive concerning the collecting and treatment system which serves the Whitburn area and associated agglomeration by the deadline of 31 December 2000.
Annex (as provided to Commission by UK authorities in April 2013)

Summary of data on spill events and volumes at Whitburn (2002-2012)

<table>
<thead>
<tr>
<th>Year</th>
<th>Frequency of ‘spills’ at Whitburn</th>
<th>Total volume spilled to sea (m^3)</th>
<th>Rainfall (mm)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pump operations</td>
<td>12-hour title</td>
<td>24-hour title</td>
</tr>
<tr>
<td>2002</td>
<td>67</td>
<td>26</td>
<td>22</td>
</tr>
<tr>
<td>2003</td>
<td>56</td>
<td>23</td>
<td>20</td>
</tr>
<tr>
<td>2004</td>
<td>110</td>
<td>37</td>
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<tr>
<td>2005</td>
<td>96</td>
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<td>11</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>2012</td>
<td>83</td>
<td>43</td>
<td>32</td>
</tr>
</tbody>
</table>

NB 2012 data are provisional, based on an early draft data submission and may be subject to change. Definitive figures will be available May 2013.
Dear Mr Latimer,

Further to my e-mail below, I would like to respond to your query as follows.

I was not on oath when I wrote to the Court, and as UK Agent to the Court would not consider that to be appropriate when communicating with the Court on a point of detail on a case. I am advised by colleagues in Defra that the minimum overall physical capacity of the Whitburn interceptor tunnel, as required in its discharge permit, is 15,661 m³. This was rounded down to 15,000 m³ in the letter to the Court of Justice on 2nd March 2012. The figure of 14,000 m³ in the letter to the Commission from 2003, and which was referred to in the UK’s defence, and in the separate letter to you from the Environment Agency in 1999, is an even more conservative statement of this physical capacity. This lower figure presents a picture that is less favourable to the UK than the actual (higher) figure would have done.

The 7000 m³ figure is the operational capacity of the tunnel. Essentially this is the volume at which a discharge via the Long Sea Outfall starts being made in normal circumstances. The extra physical volume available in the tunnel (i.e. the spare 8661 m³) is required because the tunnel may fill up at a rate which is faster than the rate at which the waste can be pumped out via the long sea outfall.

My letter to the Court, stating that storage at the site was already 15000 cubic metres was therefore correct (rounded down from 15661 m³).

Please note that as of 19th December, I will no longer be in this post, and I have asked my colleague Jane Beeko to assist with any further inquiry you may have about this matter.

Regards,

Elisabeth
From: Jane Beeko [mailto:jane.beeko@cabinetoffice.gov.uk]
Sent: 22 January 2015 10:20
To: Robert Latimer
Subject: Fwd: FW: Advocate general's Opinion.

Dear Mr Latimer

Further to your email dated 18th December 2014, I would like to remind you that we take our obligations before the Court of Justice of the European Union very seriously. As you are aware, we wrote to the Court straight after the AGO and your other points have been throughly dealt with by DEFRA and the First Tier Tribunal.

Regards

Jane Beeko
Dear Ms Toop

Re: - V/9n

Item no 3

Regards

Bob Latimer
Dear Mr Latimer,

Subject: Your e-mail dated and registered on 22 April 2014 as GESTDEM 2014/2113

I refer to your e-mail mentioned above requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ("Regulation No. 1049/2001").

In your e-mail you have asked to be provided with a number of different documents. For those which could be supplied, you have already received a reply from the unit of Mr Paul Speight directly along with the information that for the remainder of your request additional time was needed for us to reply.

In your e-mail you ask for "the copy of the latest update supplied by the UK on what is proposed to rectify the effects of the pollution problems being caused by the Whitburn and Sunderland sewerage systems". We would assume this request to relate to the letter we have now received from the United Kingdom on 31 March 2014 setting out what action they propose to remedy the situation of breach found in relation to the urban waste water collecting system serving Whitburn.

I regret to inform you that this letter is covered by the exception provided for under Article 4(2) third indent of the Regulation which lays down that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

The Court of Justice has stated in its judgment in Joined Cases C-514/07/P, C-528/07/P and C-532/07/P, that although infringement procedures provided for under Articles 258 and 260

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TFEU have the same purpose, that is to say, to ensure the effective application of the European Union (EU) law, they constitute two distinct procedures, each with its own subject-matter. Indeed, the procedure under Article 258 TFEU is designed to obtain a declaration that the conduct of a Member State is in breach of EU law and to terminate that conduct, while the procedure under Article 260 TFEU is designed to induce a defaulting Member State to comply with a judgment establishing a breach of obligations.

In the case at hand, whilst the Court has declared in the judgment in Case C-301/10 that the United Kingdom has failed to fulfil its obligations under Directive 91/271/EEC concerning urban waste water treatment, the investigation relating to the infringement procedure under Article 260 TFEU is fully ongoing.

Indeed, the reply sent by the Member State is a further reply to our standard letter of enquiry sent after the Article 258 TFEU judgment was rendered. This exchange is part of the pre-litigation stage of assessment, during which the Commission enters into a bilateral dialogue with the Member State concerned with a view to the latter bringing to an end the infringement found by the Court in its judgment in the proceedings under Article 258 TFUE or, where appropriate, to give it the opportunity to submit its observations.

With regard to documents relating to the pre-litigation stage of an infringement procedure, in its recent judgment of 14 November 2013 in joined Cases C-514/11P and C-605/11P, the Court has recognised the existence of a general presumption that public disclosure, even if only partial, of the documents relating to an infringement procedure during the pre-litigation stage thereof jeopardises the achievement of the objectives of that procedure.

In the light of the above, I consider that the letter sent to the Commission by the United Kingdom of 31 March 2014 cannot be made available to you since it is covered by the exception foreseen in Article 4(2) third indent of the Regulation. Pursuant to Article 4(2) of the Regulation, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2), third indent.

In your e-mail I can see no elements capable of showing the existence of an overriding public interest in disclosing the refused document that would outweigh the public interest in the protection of the purpose of inspections, investigations and audits.

I have also examined the possibility of granting partial access to the requested document, in accordance with Article 4(6) of Regulation 1049/2001. However, partial access is not possible considering that the document concerned is at the stage of investigation proceedings covered in its entirety by the exception under Article 4 (2), third indent.

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3 Judgment of the Court of 14 November 2013 in Joined Cases C-514/11P and C-605/11P Liga para a Protecção da Natureza (LPN) and Finland v Commission, not yet reported (paragraph 70).
Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the document or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary-General  
European Commission  
B-1049 BRUSSELS  
sg-acc-doc@ec.europa.eu

Yours sincerely,

Karl Falkenberg
Dear Ms Toop

Item 2.

Re: V/9n – to be included with my response regarding Decision V/9n.

Regards

Bob Latimer
Dear Mr Latimer

REQUEST FOR INFORMATION: WHITBURN SEWERAGE SYSTEM

Thank you for your email requesting information about the Whitburn sewerage system, which we received on 10 April. As you know, we have handled your request under the Environmental Information Regulations 2004 (EIRs). Your request for information is as follows:

‘I understand DEFRA have provided a update regarding the ECJ Court on the Whitburn case to the EC, under the EIR please could you provide a copy of the update provided to the EC?’

Following careful consideration, we have decided not to disclose the information you have requested. This is because it falls under the following exceptions in the Environmental Information Regulations 2004:

Regulation 12(5)(a): the disclosure would adversely affect international relations, defence, national security or public safety.

This exception applies to material relating to the UK’s compliance with the judgment of the Court of Justice of the European Union in Case C-301/10, where the UK was found to be in breach of the Urban Waste Water Treatment Directive in Whitburn (and London). We are currently in dialogue with the Commission on proposals to remedy this breach. Disclosure of the detail of this dialogue would adversely affect the UK’s relations with the European Commission.

Regulation 12(5)(b): the disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

Following the judgment in Case C-310/10, the United Kingdom is taking the necessary measures to comply. If the Commission considers that the United Kingdom has not taken the necessary measures to comply with the judgment of the Court, it may bring
the case before the Court after giving the United Kingdom the opportunity to submit its observations. This exception applies because the information requested relates to what constitutes the necessary measures to comply. Disclosure of our discussions with the Commission would relate to the issue that would be before the Court. It would have an adverse effect on the course of justice and the ability of the UK to receive a fair trial before the Court.

In applying the above exceptions we have had to balance the public interest in withholding the information against the public interest in disclosure.

We recognise that there would be a strong public interest in the disclosure of information bearing in mind general arguments in favour of transparency and accountability and your long standing concerns about the environmental impacts of untreated waste water in Whitburn. On the other hand, there is a strong public interest in maintaining the above exceptions because discussions with the Commission on proposals to remedy the breach of the Urban Waste Water Treatment Directive have not yet concluded and disclosure would be likely to affect the UK’s ability to hold open and frank discussions with the Commission. As the Information Commissioner noted in a previous Decision concerning Whitburn (reference: FER0439690 of 30 July 2012), ‘the Commissioner considers that there is a very strong public interest in the UK having a good working relationship with the European Commission…’. Although that Decision concerned information provided by the UK to the Court of Justice, we believe that the general principle also applies in the current circumstances. We consider there is also a strong public interest in ensuring that the UK is able to defend itself properly in the Court of Justice in the event of any future action.

We believe therefore that in all the circumstances of the case, the public interest is served by maintaining the above exceptions and withholding this information.

I attach an Annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours sincerely

Ed Beard

Head, waste water treatment, bathing and shellfish waters, chemicals and permitting
Water Availability and Quality Programme

**Direct Line**: 020 7238 5323
**Email**: edmund.beard@defra.gsi.gov.uk
Annex

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra’s complaints procedure are on our website.

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra’s own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Dear Ms Toop

Re: Decision V/9n concerning compliance by the United Kingdom with its obligations under the Aarhus Convention.

Being both a party concerned and a party involved in this progress report I feel it is important that all involved and in particular the Aarhus Convention Committee see what it is really like being a member of the public and having to deal with a real live case involving the UK authorities and the European Court of Justice. I am sorry to keep coming back to statements like: - “access to environmental information” – “public participation in environmental decision making” – “access to justice” - while to the public this sounds like steps in the right direction, in practice it is nothing of the kind, as I will demonstrate below.

The position at the moment is that DEFRA have put forward a proposal to the EC about how they intend to correct the Whitburn sewerage system, something they had to do following the European Court decision that went against them. Neither DEFRA or the EC will allow me to see this proposal and as I will demonstrate below, you will see why. I will explain with the help of correspondence I enclose: -

1. Page 11 taken from the European Court of Justice Judgement I refer to paragraph 78: –

“Second, it is to be noted that according to a study carried out in 2010 it would be possible from a technological point of view, to reduce the number of
waste water discharges from the Whitburn collecting system by enlarging the interceptor tunnel that already exists, a fact which has not been contested by the United Kingdom” – Below you will see why the UK did not want to contest it.

2. I now want you to look at the UKs response to the 2009 EC Reasoned Opinion paragraphs 57, 58 and 59: -

“57. In any event, the Whitburn scheme was designed not just for bathing waters. The use of screening and long sea outfall minimises the effect of discharges on the coastal waters in the area”

This statement beggars belief as we have all suspected that the Whitburn system was designed to spill anything that went into it. This is the first I have heard of this but it shows the Whitburn system was built to discharge screened sewage into the sea, not just storm water and this fact never came out at the Public Inquiry.

“58. There is little or no land available in the vicinity of the Whitburn interceptor tunnel and it is extremely unlikely that a solution could be found to increase the tunnel’s capacity sufficiently enough to achieve 20 spills per annum” - This is not what the Court judgement is telling us, this paragraph shows the UK are contesting it and even more as you will see: -

“59. Even if such a scheme were to be technically feasible, the construction costs alone would be excessive in that they could run to an estimated one hundred and fifty million £ sterling. This would not include the financial loss to the local economy that
would be caused by the disruption or associated operating and carbon costs from greatly increased pumping requirements. The considerations in this and the foregoing paragraph indicate that a ‘solution’ involving achievement of a 20 spill standard would give rise to excessive cost, in terms of expenditure and disruption to the life of the urban community, without ensuring commensurate environmental benefit.” The Court says the UK have not contested this, it does not look that way to me when you read their response.

3. I now want you to go back to Court judgement 2012 and read paragraphs 80, 81 and 82: -

“80. Although the improvement in water quality appears marginal and, as the UK contends, Directive 76/160 is complied with, a fact which can be taken into account in the general examination of the conditions for applying the concept of BTKNEEC, it must be stated that the costs of such an enlargement of the tunnel are not mentioned at the time, either in the observations of the parties or in the reports and studies carried out” - This is just not true; how can such a statement be made when the 2009 UK response makes direct reference to these points.

4. “81. Thus, the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained” – Once again, I just cannot understand this we are told they were presented with all the correspondence so would have a copy of all the responses to the reasoned opinions.

5. “It follows that the UK has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were
disproportionate to the improvement in the state of the environment” – This seems a extremely strange legal standard to me when you consider they chose the cheapest option not the BTKNEEC when it was built and commissioned in 1996.

6. The next sheet is page 4 taken from the minutes of a meeting held in 1992 involving the so-called best technical knowledge and as you can see: -

“20. The total estimated average yearly discharge of the sea outfall was 225,000cumts, approximately two thirds of which would be during the bathing season”

“22. The Seaburn scheme was different in principle from North Tyneside in that there was no storm return facility. Storm water would be stored in the new interceptor sewer until there was sufficient capacity to actuate the outfall pumps” – There was no return facility designed into the Whitbrun system as there was no capacity in the downstream sewerage system and here lies the problem, but the UK don’t want to admit it.

“26. The pumping station would include 6mm screening and have 2 duty and 1 standby pumps feeding the new outfall. There was no storm return facility. The pumping station was estimated to operate 20-30 times per year, but strategic operations would be introduced for purging with portable water” – How could the Court not have been made aware that there was no return facility designed into the Whitburn system? How could the Court not be aware that the Whitburn system was designed to spill at 20 to 30 years per annum? How is it we are now being told to meet
those standards the cost will be £150 million when it only cost £15 million in the first place. How was it that the Court were not aware of the proposed cost when it is contained in the reasoned opinion.

7. Next sheet is a page taken from the 1993 Whitburn discharge application form: -

"21a) State dry weather flow to pumping station/sewer - NIL

"21b) State flow at which storm discharge will commence – Maximum pump rate 3.0cumts/sec

"22. Expected frequency of operation – by modelling (21 hours) per annum.

My calculation of this is 3cu.mts multiplied by 60 = 180cu.mts/min multiplied by 60 = 10,800cu.mts multiplied by 21hours = 226,800cu.mts per year (corresponds roughly with the figure referred to in the minutes)

8. Next sheet is a page taken from the 1999 discharge application form for Whitburn: -

"22. Please state the maximum quantity it is proposed to discharge in any one day – 259,200cu.mts.

This licence allows more to be discharged in one day than the system was designed to spill in a year, this figure seems to have been conveniently overlooked by the so-called best technical knowledgeable people
While the thinking behind the Aarhus Convention proposals and the public perception is that the UK and the EC had adopted these good intentions, in reality the adopting of the Environmental Information Regulations has made the situation even worse as the authorities use the opt out clauses to their advantage as I will show. I will further demonstrate this by providing two further emails, one from the UK and one from the EC, to show, while we may argue about cost of going to Court, looking at the correspondence above it would be a none starter for an ordinary member of the public.

It cannot be denied that there is something seriously wrong here at Whitburn, yet the authorities claim under the EIR that there was a overriding interest that prevented disclosure under the public interest test - this only goes to show the Convention has not been adopted. We have a situation here where a Court Decision has been made based on flawed evidence in the case of Whitburn so it must be that the intentions to correct this system are also based on that flawed evidence. You can see by the UK’s letter dated 29 December 2014 that the UK authorities are quite happy to play with words and while the Aarhus Conventions intentions are in good spirit the same cannot be said for the authorities.

Regards

Bob Latimer
while the volume for 2009 was 762 300 m³. The Commission, basing its observations on the frequency of those discharges and their intensity, has clearly demonstrated that, both before and after the expiry of the period laid down by the additional reasoned opinion, they were a normal occurrence, as such a number of discharges cannot be linked to exceptional circumstances. Indeed, the United Kingdom does not contend in its observations that those discharges are exceptional in nature.

Second, it is to be noted that according to a study carried out in 2010 it would be possible, from a technological point of view, to reduce the number of waste water discharges from the Whitburn collecting system by enlarging the interceptor tunnel that already exists, a fact which has not been contested by the United Kingdom.

So far as concerns the costs required to be incurred and the benefits obtained, that study shows that an improvement of 0.3% in respect of the quality of the receiving waters could be achieved by the tunnel enlargement works, on the basis of 20 discharges per year.

Although the improvement in water quality appears marginal and, as the United Kingdom contends, Directive 76/160 is complied with, a fact which can be taken into account in the general examination of the conditions for applying the concept of BTKNNEC, it must be stated that the costs of such an enlargement of the tunnel are not mentioned at any time, either in the observations of the parties or in the reports and studies carried out.

Thus, the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained.

It follows that the United Kingdom has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were disproportionate to the improvement in the state of the environment.

Accordingly, the Commission was right in finding that the collecting system put in place in Whitburn does not meet the obligations laid down in Article 3 of, and Annex I(A) to, Directive 91/271.

London

In the case of the agglomeration of London, it is not in dispute, in accordance with the contentions of the United Kingdom itself, that, at the end of the period laid down in the additional reasoned opinion, that agglomeration had neither treatment plants at Beckton, Crossness and Mogden performing the secondary treatment of all the urban waste water entering the collecting system, in accordance with Articles 4(1) and 10 of Directive 91/271, and guaranteeing that the discharges from them satisfied the requirements of Annex I(B) thereto nor collecting systems at Beckton and Crossness with a sufficient capacity, in accordance with Article 3 of the directive.

The Commission, relying on a TTSS report of February 2005, observes that there were approximately 60 waste water discharges from storm water overflows in London per year, even in periods of moderate rainfall; untreated water having a volume of several million tonnes was thus discharged into the River Thames every year.

So far as concerns the treatment plants of the collecting system for London, that report shows that their capacity is sufficient in dry weather, but not sufficient in the slightest in the case of rainfall.

The United Kingdom does not dispute the facts relied upon by the Commission and observes
assessed as such. In constructing and designing the improvements to the collecting system, my authorities considered the impacts of the discharges on the receiving bathing-waters. The tunnel was an important advance in its own right in limiting pollution from CSOs, which previously discharged direct to the beach or through short outfalls. It is worth noting that my authorities consider it is important that the tunnel retains capacity to store further rain, by discharging through the long sea outfall. This is because if the tunnel gets too full there would be instantaneous discharge through high level overflows onto the beach, which would be much worse for the environment and bathing water compliance. Therefore the balance struck by pumping out to sea to avoid risk of more polluting discharge inshore is an important part of limiting pollution of receiving waters.

56. The Commission considers that spill rates of between 56 and 91 spills per year and annual discharge volumes of 359,640 m$^3$ and 561,240 m$^3$ of untreated urban waste waters does not comply with Art 3 and Annex LA of the Directive, particularly given the close vicinity of designated bathing waters in Whitley and Seaham (ARO, para 34). However, the Commission cites figures for the volume of discharge without putting the figures in context. For the 3 year period 2005-2007, CSO at Whitley only discharged 1.6% of the total collected volume of treated sewage$^{11}$. A reference in isolation to the percentage spillage of total collected volume is insufficient to establish a breach of the Directive. For one thing, there is no automatic correlation between percentage of spillage and environmental impact, and in any event, all circumstances have to be taken into account, such as the dilution achieved before spills occur. It is to be noted that the 1995 Report indicated that in Germany overflows from CSOs typically correspond to “between 0.5% and 2% of the annual polluting load” (1995 Report, page 121). In this case, the percentage spillage tends to show good practice, not the contrary.

57. The Commission suggests that the fact that the Whitley bathing waters complied with the standards in the Bathing Water Directive cannot be relied upon in support of the fact that compliance has been ensured with the Directive. As explained above (para. 35), my authorities consider it is legitimate to consider positive indicators of water quality like compliance with standards under the Bathing Water Directive in assessing pollution of receiving waters. A detailed coastal dispersion modelling report shows that the current Whitley discharge has little or no impact on the Whitley bathing waters or other surrounding coastal waters. This is reflected by the excellent bathing water results observed at the Whitley bathing waters since

$^{11}$ For the 3 year period 2005-2007, Hendon sewage treatment works treated a total of 69 million m$^3$ of sewage, during which time Whitley discharged 1,139,220 m$^3$ of storm sewage. This represents only 1.6% of the total collected volume of treated sewage.
the Whitburn system was installed. My authorities have also assessed current performance against the revised Bathing Water Directive. Both Whitburn bathing waters are predicted to comply with the revised Directive’s ‘excellent’ standard. My authorities believe that their chosen solution of the provision of storage, screening and a long sea outfall, goes further to protect the bathing waters at Whitburn than would be achieved by the Commission’s proposed spill frequency of 20 spills per annum. Finally, it is worth noting that, despite the Commission’s view as to the relevance of bathing water compliance to Directive compliance, the Commission itself emphasises the close proximity of the Whitburn and Seaburn bathing waters in expressing the view that my authorities are in breach of the Directive (ARO para 34). In any event, the Whitburn scheme was designed not just for bathing waters. The use of screening and a long sea outfall minimises the effect of discharges on the coastal waters in the area.

58. There is little or no land available in the vicinity of the Whitburn interceptor tunnel and it is extremely unlikely that a solution could be found to increase the tunnel’s storage capacity sufficiently enough to achieve 20 spills per annum. This would mean that alternative solutions would have to be sought by either increasing storage, or replacing combined sewerage with separate systems within the sewage catchment. The sewerage network serves a major urban and suburban area to the east of and north east of Whitburn. It is estimated that any solution within the catchment area would require major work across the area over several years, possibly over 15 years. This would cause massive disruption to transport, the economy and people’s quality of life within the Sunderland area.

59. Even if such a scheme were to be technically feasible, the construction costs alone would be excessive in that they could run to an estimated one hundred and fifty million £ sterling. This would not include the financial loss to the local economy that would be caused by the disruption or the associated operating and carbon costs from greatly increased pumping requirements. The considerations in this and the foregoing paragraph indicate that a “solution” involving achievement of a 20-spill standard would give rise to excessive cost, in terms of expenditure, and disruption to the life of the urban community, without ensuring a commensurate environmental benefit.

60. The Commission also draws upon the fact it has continued to receive regular complaints of sewage debris littering the beaches around Whitburn (ARO para 35). As regards the sewage litter, the complaints of sewage litter have been investigated by my authorities and do not emanate from the Whitburn outfall.
61. During the period 2006 – 2008, 10 sewage related incidents were reported to the Environment Agency for the Whitburn area. This is a low number of complaints given the popularity of the Whitburn beaches and the three year period involved. The Environment Agency is of the view that there is no significant problem and that if there was a problem with sewage related debris it would be receiving a large number of complaints from various independent sources, which is not the case. Further, the Environment Agency is of the view that the reported incidents at Whitburn do not arise from the Whitburn discharge, which is screened to 6mm to remove any sewage debris. The Environment Agency’s view is supported by the fact that dispersion modelling indicates that it is very unlikely that the Whitburn discharge would impact upon the Whitburn beaches. It is thought to be more likely that any sewage related debris found at Whitburn comes from the Tyne estuary.12

62. The Commission’s contention that the discharges from Whitburn demonstrate a breach of the Directive results from two points. The first is based on its adoption of the 20 per annum spill limit. Such a spill limit is arbitrary and inappropriate, for the reasons given in paras. 11 and 12 of this response. Exceedance of this limit has little or no predictive value as regards adverse environmental impact on receiving waters. The second is its unsubstantiated assumption that an annual overflow level of 1.6% of total collected volume indicates that the design of the collecting system or CSO is incompatible with the Directive. My authorities do not accept that the Commission has demonstrated any breach of the Directive in respect of Whitburn.
<table>
<thead>
<tr>
<th>Item</th>
<th>Discussion</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>The total estimated average yearly discharge of the sea outfall was 225,000 m³, approximately two thirds of which would be during the bathing season.</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>After pumping, the outfall would be purged with potable water. This was a strategic operational requirement which NWL did not think would affect the consent and ensured that the outfall remained &quot;fresh&quot;.</td>
<td>NWL</td>
</tr>
<tr>
<td>22.</td>
<td>The Seaburn scheme was different in principle from North Tyneside in that there was no storm return facility. Storm water would be stored in the new interceptor sewer until there was sufficient capacity to actuate the outfall pumps.</td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>The existing outlets would only operate in the event of a storm greater than 1 in 5 years.</td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>RW would write to NRA explaining the operation of the Seaburn SSO’s.</td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>The existing SSO’s at Roker, Seaburn and Whitburn, together with the Whitburn Colliery Sewer would be connected into the new system and discharge to the sea via the new Whitburn Steel pumping station.</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>The pumping station would include 6 mm screening and have 2 duty and 1 standby pumps feeding the new outfall. There was no storm return facility. The pumping station was estimated to operate 20-30 times per year, but strategic operations would be introduced for purging with potable water.</td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>The existing overflow facilities for which the outfalls would be abandoned and replaced with wall flaps, would generally only operate in the event of a storm greater than 1 in 5 years or if there was a breakdown and the system had filled up.</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>A screened relief discharge from the pumping station would be provided to protect the equipment in the event of a breakdown.</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>The system would discharge at certain rates when the pumps were running:—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. When the system was full to operating capacity.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. When HWL decided to use the pumps for strategic reasons.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. For purging the systems.</td>
<td></td>
</tr>
<tr>
<td>33.4</td>
<td>HT advised that consent was not required for operation in a real emergency.</td>
<td></td>
</tr>
<tr>
<td>33.5</td>
<td>SF advised that the existing overflows would operate on average 1 in 5 years and only when the new system failed, excepting a major pump failure.</td>
<td></td>
</tr>
</tbody>
</table>

Ref: N20024
20 FOR STORM AND EMERGENCY DISCHARGES AND SURFACE WATER SEWERS

State the type of discharge. Tick one or more boxes as appropriate.

- Storm tanks
- Storm overflow from sewer
- Storm overflow from pumping station
- Emergency overflow from sewer
- Emergency overflow from pumping station
- Surface Water
- Other

If other, please give further details:

| 21 | a) State dry weather flow to pumping station in sewer | Kil m³/day |
|    | b) State flow at which storm discharge will commence |         |
|    |                                                      | MAXIMUM PUMP RATE l/sec 3.0m³/SEC |
| 22 | Expected frequency of operation                     | C 70 per annum by modelling (over 21 hours) |
| 23 | State volume of storm tank(s).                      | m³     |
| 24 | State volume of wet well STORAGE                    | 7500 m³ |
| 25 | What provisions have been made to raise alarms? (eg telemetry) | TELEMETRY LINK TO PERMANENTLY MANNED INSTALLATION |
| 26 | What facilities have been provided to prevent the discharge of gross solids? (For screens, give bar spacing or aperture.) | 6mm SCREENS |
| 27 | What provisions have been included to deal with     |         |
|    | a) power failure?                                   |         |
|    | b) mechanical breakdown?                            |         |
|    | c) rising main failure?                             |         |
| 28 | What facilities have been provided for flow measurements? |         |

29 Are there any other factors to be taken into account?

WILL ALSO ACT AS EMERGENCY OVERFLOW FOR BOTH SEABURN AND ROKER PUMPING STATIONS IN EVENT OF ELECTRICAL OR MECHANICAL FAILURE OF RISING MAINS.
2 DETAILS OF DISCHARGE(S)

2.1 State the nature of the discharge(s) (see note i and ii) - tick one or more boxes as appropriate

- Sewage Effluent - volume of 5 cubic metres per day or less [x]
- Sewage Effluent - volume greater than 5 cubic metres per day (complete annexe 1) [ ]
- Sewage Effluent discharged under storm or emergency conditions (complete annexe 2) [x]
- Cooling Water (complete annexe 3) [ ]
- Trade Effluent (including site drainage) (complete annexe 3) [ ]
- Others (please specify)

Foul sewage discharge during planned maintenance periods after operational. Volume is used up. Groundwater amended with sewage during this and other periods.

2.2 Please state the maximum quantity it is proposed to discharge in any one day [269200] m³/day

Briefly state how this figure was calculated (see note ii).

Assumed 3000 litres/second is discharged over full 24 hours. It is highly unlikely that this volume will ever be discharged, so planned work will be used to coincide with a period of dry weather using Net Office forecasts, and full use will be made of in-system storage and pumping in emergency situations.

2.3 a) Indicate proposed means of discharge - tick as appropriate and show on plan:

(For 1, 2 & 3 please state dimensions below)

1. Pipe [x]
2. Channel [ ]
3. Culvert [ ]
4. Borehole [ ]
5. Well [ ]
6. Soakaway [ ]
7. Sub-Irrigation System [ ]
8. Combination of 6. & 7. [ ]
9. Other (please specify below) [ ]

b) National Grid Reference(s) of point(s) of discharge (see note iii).

N 2 / 4206 / 6115 (please indicate on accompanying plans)

2.4 a) The Agency will normally require adequate provision for the taking of samples of the discharge in a safe and convenient manner at any time. Please indicate the means proposed (see note iv) - tick as appropriate and show on plan:

At the outlet [ ]
At a manhole or sampling chamber [ ]
Other (please specify) [ ]

Flow measurement will be based on pumping rate and detention.

b) National Grid Reference(s) of sampling point(s). (If different from 2.3 b) above)

[ ] [ ] [ ] [ ] [ ] [ ] (please indicate on accompanying plans)

c) What flow measurement facilities will be provided (see note v)?

Please give details.

Flow measurement will be based on pumping rate and detention.
Dear Mr Latimer,

<<Internal review response - RFI 6512.pdf>>

Please see the attached response to your request for internal review regarding your request for information that you emailed to Defra on 10 April 2014 (Defra reference RFI 6512).

Yours sincerely,

David Waller

David Waller | Head of Information Rights Team and Data Protection Officer for Defra and the Executive Agencies | Knowledge, Transparency and Resilience | Department for Environment, Food and Rural Affairs | Email [email address redacted] | Address: Area 4D, 4th Floor, Nobel House, 17 Smith Square, London, SW1P 3JR.

Department for Environment, Food and Rural Affairs (Defra)

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Dear Mr Latimer

REQUEST FOR INFORMATION: WHITBURN SEWERAGE SYSTEM

Thank you for your email of 26 May in which you requested an internal review of the handling of your request for information relating to the Whitburn Sewerage system. I apologise for the delay in replying to you.

We have handled your request for an internal review under the Environmental Information Regulations 2004 (EIRs).

In accordance with Defra’s internal review procedures, your case has been reviewed by the Information Rights Team in discussion with colleagues who handled your original request.

Summary

The conclusions of the internal review are that Defra was correct to withhold the information in response to your request of 10 April 2014.

I set out below a fuller explanation of our decision.

Chronology

On 10 April 2014, you emailed the following request for information to Defra:

‘I understand DEFRA have provided an update regarding the ECJ Court on the Whitburn case to the EC, under the EIR please could you provide a copy of the update provided to the EC?’

On 13 May 2014, Defra responded to your request for information withholding the requested information under the exception at regulation 12(5)(a) of the EIRs, which relates to information where disclosure “would adversely affect international relations, defence, national security or public safety”.

On 26 May 2014, you emailed Defra requesting an internal review of the response to your request for information. As 26 May was a bank holiday, for the purposes of the EIRs, Defra received your request on 27 May.
There have been other emails, but the above details cover the essential correspondence for the purposes of your request and internal review.

**FOIA or EIRs**

The information that you have requested is ‘environmental information’ as defined in regulation 2(1) of the EIRs and so your request falls under the EIRs.

**Timeliness**

We have considered whether Defra complied with the requirement in regulation 5(2) of the EIRs to respond to a requester ‘as soon as possible and no later than 20 working days after the date of receipt of the request’. Defra received your request for information on 10 April 2014 and emailed its reply to you on 13 May 2014, which is the 20th working day following receipt of your request after taking account of the three days public holidays on 18 and 21 April and 5 May. Therefore, Defra has complied with regulation 5(2) of the EIRs.

We have also considered whether Defra complied with the requirement in regulation 11(4) of the EIRs to reply to your request for internal review ‘as soon as possible and no later than 40 working days’. As mentioned in the chronology section, Defra received your request for internal review on 27 May 2014 and so the 40 working day deadline was 23 July. Therefore, we have not met this deadline and so Defra has not complied with regulation 11(4) of the EIRs. I apologise for this delay in responding to your request for an internal review.

**Consideration of the internal review and conclusion**

After establishing that Defra holds the requested information, the starting point for the consideration of internal reviews is to determine whether the exceptions to disclosure and the public interest set out in the response to the requester have been applied correctly.

With regard to your request, I confirm that Defra does hold the requested information.

I shall now set out my consideration of the application of the exceptions to disclosure in the EIRs to your request, namely:

- Regulation 12(5)(a): disclosure would adversely affect international relations, defence, national security or public safety
- Regulation 12(5)(b): disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature

Although these exceptions apply to a number of aspects, as listed above, Defra’s response of 13 May 2014 applied these exceptions only in respect of international relations (regulation 12(5)(a)) and the course of justice and the ability to receive a fair trial (regulation 12(5)(b)). Therefore, this response to your request for internal review focuses only on these aspects in relation to the exceptions.
Regulation 12(5)(a) (disclosure would adversely affect international relations)
Regulation 12(5)(b) (disclosure would adversely affect the course of justice and the ability of a person to receive a fair trial)

The reasons for withholding the information, including details of why the public interest in maintaining the exceptions at regulations 12(5)(a) and (b) of the EIRs outweigh the public interest in disclosure, are set out clearly in Defra’s response of 13 May and are supported by the findings of this internal review. I also note the points that you make in your request for an internal review arguing against non-disclosure.

I have considered the application of the exceptions at regulations 12(5)(a) and 12(5)(b) of the EIRs and the public interest arguments for and against disclosure as set out in Defra’s letter of 13 May and have concluded that the information was correctly withheld in accordance with the EIRs. I am satisfied that disclosure would adversely affect the interests covered by these exceptions as expressed in Defra’s response of 13 May and that the public interest falls in favour of maintaining those exceptions.

I hope that you consider that this letter fully addresses your concerns. However, if you are not satisfied with the outcome of this internal review, you have the right to appeal directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
http://www.ico.gov.uk/complaints.aspx

Yours sincerely

Mike Kaye

Mike Kaye
Head of Information Standards
Email: requestforinfo@defra.gsi.gov.uk
To: "aarhus compliance"
From: "Robert Latimer" [email addresses redacted]
Date: 01/23/2015 12:04PM
Subject: FW: Ares(2014)1761297 - Your e-mail dated and registered on 22 April 2014 as GESTDEM 2014/2113

(See attached file: UK - NIF 20004225 - GESTDEM 2113 Latimer May.pdf)
Dear Mr Latimer,

Subject: Your e-mail dated and registered on 22 April 2014 as GESTDEM 2014/2113

I refer to your e-mail mentioned above requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents1 ("Regulation No. 1049/2001").

In your e-mail you have asked to be provided with a number of different documents. For those which could be supplied, you have already received a reply from the unit of Mr Paul Speight directly along with the information that for the remainder of your request additional time was needed for us to reply.

In your e-mail you ask for "the copy of the latest update supplied by the UK on what is proposed to rectify the effects of the pollution problems being caused by the Whitburn and Sunderland sewerage systems". We would assume this request to relate to the letter we have now received from the United Kingdom on 31 March 2014 setting out what action they propose to remedy the situation of breach found in relation to the urban waste water collecting system serving Whitburn.

I regret to inform you that this letter is covered by the exception provided for under Article 4(2) third indent of the Regulation which lays down that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

The Court of Justice has stated in its judgment in Joined Cases C-514/07/P, C-528/07P and C-532/07P, that although infringement procedures provided for under Articles 258 and 260

TFEU have the same purpose, that is to say, to ensure the effective application of the European Union (EU) law, they constitute two distinct procedures, each with its own subject-matter. Indeed, the procedure under Article 258 TFEU is designed to obtain a declaration that the conduct of a Member State is in breach of EU law and to terminate that conduct, while the procedure under Article 260 TFEU is designed to induce a defaulting Member State to comply with a judgment establishing a breach of obligations.

In the case at hand, whilst the Court has declared in the judgment in Case C-301/10 that the United Kingdom has failed to fulfil its obligations under Directive 91/271/EEC concerning urban waste water treatment, the investigation relating to the infringement procedure under Article 260 TFEU is fully ongoing.

Indeed, the reply sent by the Member State is a further reply to our standard letter of enquiry sent after the Article 258 TFEU judgment was rendered. This exchange is part of the pre-litigation stage of assessment, during which the Commission enters into a bilateral dialogue with the Member State concerned with a view to the latter bringing to an end the infringement found by the Court in its judgment in the proceedings under Article 258 TFEU or, where appropriate, to give it the opportunity to submit its observations.

With regard to documents relating to the pre-litigation stage of an infringement procedure, in its recent judgment of 14 November 2013 in joined Cases C-514/11P and C-605/11P, the Court has recognised the existence of a general presumption that public disclosure, even if only partial, of the documents relating to an infringement procedure during the pre-litigation stage thereof jeopardises the achievement of the objectives of that procedure.

In the light of the above, I consider that the letter sent to the Commission by the United Kingdom of 31 March 2014 cannot be made available to you since it is covered by the exception foreseen in Article 4(2) third indent of the Regulation. Pursuant to Article 4(2) of the Regulation, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2), third indent.

In your e-mail I can see no elements capable of showing the existence of an overriding public interest in disclosing the refused document that would outweigh the public interest in the protection of the purpose of inspections, investigations and audits.

I have also examined the possibility of granting partial access to the requested document, in accordance with Article 4(6) of Regulation 1049/2001. However, partial access is not possible considering that the document concerned is at the stage of investigation proceedings covered in its entirety by the exception under Article 4(2), third indent.

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3 Judgment of the Court of 14 November 2013 in Joined Cases C-514/1 IP and C-605/1 IP Liga para a Protecção da Natureza (LPN) and Finland v Commission, not yet reported (paragraph 70).
Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the document or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary-General  
European Commission  
B-1049 BRUSSELS  
sg-acc-doc@ec.europa.eu

Yours sincerely,

[Signature]

Karl Falkenberg
Dear Aarhus Compliance Committee

Re Decision V/9n

Copy of my email to my colleague Mr Eddie Moore dated 24 December 2014.

He is classed by the EA as I am as being manifestly unreasonable.

This allows the EA to escape from providing any information showing they have been negligent.

As you can see the ICO explains to the EA how to stop answering my emails.

Once the ICO showed the EA how to do this they then cannot go back.

The Judge from the Tribunal said the most likely people to hold the information would be the EA.

He was well aware that the EA would not correspond with us.

Regards

Bob Latimer
From: Tyldesley, Barbara
Sent: 11 September 2008 14:58
To: Bakkenist, Gisèle; Thirsk, Helen; Morris, Elizabeth; Jarvis, Chris; Petersen, Lorna; Nuttall, Adrian
Subject: Vexatious requests

Dear All

I have today been speaking to Bernard McNally at the ICO about our most persistent requester Robert Latimer (15 years at least) and whether we are obliged still to acknowledge every communication from him. You may recall he has complained to the ICO about our refusal to continue to discuss the sewerage system of Whitburn, and we have (as advised by the ICO) issued a s.14 FoI letter (vexatious request refusal). He continues to send several emails every week to Paula Buchan who has been designated his sole point of contact.

I rang the ICO to ask whether, given that we have issued the s.14 notice, and applied our Vexatious complainant policy, we are obliged to make any kind of response to any kind of correspondence on the same subject. Bernard McNally seemed alarmed that we had been told that s.14 could apply, and said that strictly whenever the request is for Environmental Information we must apply the Regs. (This was my view at the time, especially as we were not in fact refusing a request for information as such, but were saying "There is no more information we can give you". The advice was given by Jenny Sanders to Paula Buchan in a telephone conversation.)

Bernard said that we can apply our policy for dealing with vexatious complainants, and limit new requests coming from Mr Latimer by blocking his emails (having given him another route for correspondence), and we can say that we will only respond to a limited number of requests, say, one a month. I don't know what others think but I would rather stick to opening emails in case they contain any new requests, and for the vexatious ones sending a quick response giving a repetition of the stock phrases "We are in receipt of your communication dated xxx. We have explained that we are not prepared to enter into further discussions on this matter".

Bernards' advice contradicts that from Jenny Sanders on what regime applies. I could not get an answer to the question based on the current situation where we have issued a s.14 Notice because Bernard did not accept that was correct. If we followed his advice strictly under the EIRs we would have to refuse each request about Whitburn in full quoting 12(4)(b) with a PI test and a right to review - which I'm sure we can't be expected to do. He said it would be acceptable to limit Mr Latimer's ability to make requests - should we do so?

Any thoughts?

Barbara

Barbara Tyldesley
Senior Legal Assistant
Information Law Unit
GTN 7 28 2326
tel. 0113 231 2326
Mr R Latimer  
Shell Hill  
Whitburn Bents Road  
Whitburn  
Tyne & Wear  
SR6 7NT

Our ref: JT/PB/let.doc  
Your ref:  
Date: 18 September 2008

Dear Mr Latimer

CHANGE IN HANDLING CORRESPONDENCE

I write to inform you that the Environment Agency has taken a decision which affects your ability to request information. You have been corresponding with various members of staff since January 1998 on the subject of the Hendon & Whitburn sewerage system and related matters. We have corresponded exhaustively which has taken hundreds of hours; in the last six months alone you and we have exchanged an average of forty-five emails in each month. We have explained to you that we do not consider there is any more we can usefully say on the subject.

Our position is that your continued requests on this subject are, in the terms of the Environmental Information Regulations 2004, “manifestly unreasonable”. The Environment Agency has spent a disproportionate amount of time dealing with your correspondence on this matter and has now taken a decision that our resources may be deployed more effectively elsewhere. As a public authority we have a duty to allocate our limited resources in a constructive manner which will benefit the community and the environment.

We wrote to you on 11 January 2008 and informed you that if you were not satisfied with our decision you could appeal to the Information Commissioner, which you have done. We are awaiting the appointment of a case officer by the Commissioner’s office.

From Monday 22nd September, 2008 your emails will be blocked and will not be answered. Emails from other people whom we have reason to believe are acting on your behalf will not be answered. If you wish to correspond with the Environment Agency on any new matters, please write to Paula Buchan at the address below, no more frequently than once a month. We will not reply to letters which contain references to Sunderland’s sewerage system or related matters. We will reply to one new request for information per month within the time limits set out in the Environmental Information Regulations 2004. Requests for information may incur a charge in accordance with the EIRs.

Yours sincerely

JULIE TEALL  
Planning and Corporate Services Manager

Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR.  
Customer services line: 08708 506 506  
Email: enquiries@environment-agency.gov.uk  
www.environment-agency.gov.uk
Mr R Latimer  
Shell Hill  
Bents Road  
Whitburn  
Tyne & Wear  
SR6 7NT

Dear Mr Latimer

Sunderland Sewerage System

Thank you for your letter of 22 January 2012.

As we have repeatedly told you, we will not enter into further discussion with you regarding the Sunderland Sewerage System. We stand by our position and we will not carry out an internal review of our decision not to continue responding to you.

We still consider your continuing requests for information to be manifestly unreasonable and obsessive in nature, as supported by the Information Commissioner’s report of 17 February 2009.

We have spent a disproportionate amount of time dealing with your correspondence and continuing to do so is a significant burden on us in terms of expense and distraction from our duties. We no longer believe that you are seeking answers to your questions, but rather asking for further information to challenge our views and decisions.

All future correspondence that you send to us will be considered and filed without acknowledgement, unless you are asking for information that relates to a subject that is substantially new.

Furthermore, we will not tolerate any insulting or disrespectful comments about our staff. Any correspondence of this nature will be filed without further consideration.

You are entitled to inspect the public register free of charge, or to have public register data sent to you at a charge.

I still encourage you to call our national incident hotline on 0800 807 060 to report any environmental incidents as soon as possible after you have witnessed an event. All calls to this number are free from a landline.

Yours sincerely

Victoria Hardy  
External Relations Team Leader
Mr R Latimer  
Shell Hill  
Bents Road  
Whitburn  
Tyne & Wear  
SR6 7NT

Our ref:  NC12-1014

Date:  16 October 2012

Dear Mr Latimer

Information Request

Thank you for your letter of 10 September 2012.

Please find enclosed a copy of the Whitburn Steel Storm Pumping Station Annual Return 2011-12 from our public register of information.

We are providing this free of charge as it was straightforward request and did not take long to produce. However, larger requests for public register data and information may still be charged.

With reference to the other data and information you have requested, please refer to our letter of 14 February 2012.

Please also find enclosed our Standard Notice, which sets out how the data and information we supply to you can be used.

Yours sincerely

Victoria Hardy  
Customers & Engagement Team Leader

Enc.
Decision Note - September 2013

Review of Environment Agency correspondence with Mr Robert Latimer

On 18 September 2008 the Environment Agency made a decision to block emails sent from Mr Latimer and he has asked us to review this decision. Since we closed the letter box at Tynside House, people cannot drop off post by hand outside working hours, and Mr Latimer has also asked us to review this decision.

Decision

We will not change our decision to block emails from Mr Latimer or to close the external post box. Our position on handling correspondence from Mr Latimer will be reviewed again in 2 years time.

Reasoning – post box

Mr Latimer says it is most convenient for him to drive a round trip of 30 miles from Whitburn to Newcastle when he is in the area for business and drop off letters. He says the post is too expensive.

His last letter was sent by special recorded delivery and contained single sided copies of information we had provided to him, creating unnecessary postage cost. We had sent a stamped and addressed envelope to help him but he did not use it.

The post box has been blocked following a fire risk assessment and security review by the facilities team at our Tynside House Office in Newcastle upon Tyne. This is a national team and the decision brings this building into the same condition as other buildings in the estate. We are satisfied that the decision was not motivated by a desire to deny Mr Latimer access.

The office opening hours are 8:30am to 5pm and a reception desk is staffed to receive visitors, post and contractors.

The mechanisms which exist for Mr Latimer to contact the Environment Agency have been reviewed and we conclude that post or hand delivery during office hours is an adequate means of communication. In an emergency we have a 24 hour telephone number and duty officer system if a situation becomes urgent.

Reasoning - Email Blocking

The key question for us was the prospect of a change in behaviour from Mr Latimer which led to the blocking of the emails. Mr Latimer chose to contact numerous staff at different levels in the organisation often on similar subjects and with overlapping timescales in great quantity. This lead to a difficulty in managing resources allocated to work and also to business inefficiency in duplicating responses. The Information Commissioner supported the Environment Agency in opposing this manifestly unreasonable behaviour.
Mr Latimer has not changed his interests and still corresponds about the Sunderland Sewerage System and challenges the relationship between the Environment Agency and Northumbrian Water Limited. He continues to dispute the data we supply, questions the validity of our responses and expresses unhappiness about our views.

There is no acceptance of our responses and he continues to take his claims to the Information Commissioner's Office and other government overseers.

Mr Latimer writes regularly to say we don’t know what we are talking about despite our establishing a single point of service for him so we can get questions to the right people.

I think it is reasonable to exercise a choice in who responds to Mr Latimer's correspondence which is not afforded to us if he e-mails different people directly. This also enables us to judge priorities and whether the questions have already been answered or the data and information he requests has already been supplied.

Before the block was put in place, we were not able to track and respond to meet our service standards as well as deliver a properly considered response to questions and information requests. This also causes problems with accurate records management.

It is important to note that we are not refusing to supply information, but are ensuring a predictable route is followed. Mr Latimer has continued to respond by email even though the block is in place.

We have reviewed the need to keep the block in place and we can see no reason to change the decision given that we continue to answer new requests and deliver an acceptable standard of service.

**Our revised position on handling correspondence from Mr Robert Latimer**

We have re-evaluated how we handle correspondence from Mr Latimer, in light of the findings of this review and the recent decision of the First Tier Tribunal (Information Rights) dated 3 September 2013. This further supports our position communicated to Mr Latimer in our letters of 18 September 2008 and 14 February 2012.

**Position**

We will not enter into any further discussion with Mr Latimer regarding the Sunderland Sewerage System.

We still consider his continuing requests for information to be 'manifestly unreasonable' and obsessive in nature, as supported in a report by the Information Commissioner in February 2009 and by the decision of the First Tier Tribunal (Information Rights) dated 3 September 2013, which stated that "Mr Latimer's multiple detailed requests will not facilitate this [changes to the sewerage system], they do not in any significant way improve public understanding and they are a severe distraction to the Environment Agency from its proper work".

All correspondence that Mr Latimer sends to us will be fully considered and filed without acknowledgement, unless he is asking for information that relates to a subject that is substantially new.
16. On the following day the ECJ published its decision in the infraction proceedings, finding the UK to have failed to comply with the Directive.

17. On 21st January, 2013 RL again requested this information and was told again, the same day, that DEFRA did not hold it. He complained to the ICO.

The Decision Notice

18. The ICO upheld DEFRA's claim that it did not hold the requested information. By Notice dated 17th November, 2013 RL appealed to the Tribunal against that decision.

Our Decision

19. EIR reg. 5(1) provides that, subject to succeeding paragraphs immaterial to this appeal,

"a public authority that holds environmental information shall make it available on request".

Whether DEFRA held the requested information is a simple question of fact in this case, relating to the content of its electronic and paper records.

20. The explanation for the possible discrepancy between 4.5 and 6 DWF and whether they have ever been used as measurements of the same flow or pass forward rate remains unclear to the Tribunal. The account set out in the UK Defence to the ECJ proceedings to the effect that there was no single DWF throughout the system and that 4.5 was merely the median figure within the possible range would not, of itself, explain why 6 DWF was referred to before and after the 2001 Inquiry as the critical flow for discharge into the interceptor tunnel. It may be that different figures were adopted by different agencies or at different
times. It may be that, as suggested in correspondence, DWF is no better than an approximate value. What is quite clear is that, if DWF is a constant; the two statements – (i) $6 \times DWF = 129\text{l/s}$ and (ii) $4.5 \times DWF = 129\text{l/s}$ cannot both be true. Equally clear is the fact that the stipulated flow rate for discharge to the tunnel is measured in litres per second, not multiples of dry weather flow.

21. The Tribunal is not concerned with which, if either, DWF is relevant to the permitted discharge. Nor is its role to pass judgement on the performance of the relevant agencies in protecting the environment of Whitburn. That was, indirectly, the function of the ECJ. The wording of the request requires it rather to ask itself what evidence there is that DEFRA made or are likely to have made or received from another body, presumably the EA, calculations as to how many DWF equate to 129 l/s at or fairly close to the time when the request was made.

22. It seems from the documents that references to $4.5 \times DWF$, whatever they referred to, originated in the EA which passed it to DEFRA and to those preparing the UK case for hearing at the ECJ. Those references, according to the EA and to the UK Defence, were, as mentioned above, to a median figure for flows throughout the Sunderland system. If that is right, it appears to be entirely unrelated to a pass forward or flow rate at Whitburn required to trigger discharge into the interceptor tunnel.

23. If any public authority held calculations leading to the critical equation – and, as indicated above, it is far from clear that any did – that authority would be the EA.

24. DEFRA has repeatedly stated that it holds no such calculations. That seems to us inherently probable, given the more direct involvement of the EA in this issue and the fact that DEFRA has not argued that $4.5 \times DWF = 129\text{l/s}$. We have no hesitation in concluding, on a balance of probabilities, that its denial is well-founded.
25. Questions of the public interest, briefly referred to in the Decision Notice, do not arise therefore.

26. For these reasons we dismiss this appeal.

27. Our decision is unanimous.

28. We wish to add, however, that RL's tireless battle to staunch the stench from these discharges, whether or not always judiciously waged, is wholly understandable. Such a nuisance can blight the life of a community, whether or not any particular authority is to blame. His problem is that information requests of this kind are unlikely to lead to a solution. Perhaps the simple fact of the discharge, rather than the calculations underpinning it, lies at the heart of his grievance.

Signed

David Farrer Q.C.
Tribunal Judge
4th. April, 2014
Dear Aarhus Compliance Committee

Re: Decision V/9n

The Whitburn case went before the ECJ in 2011, this lead the Advocate General Mr P Mengozzi giving his Opinion on the 26 January 2012, I quote from this Opinion:

1. “71. When the amount of water collected in the Whitburn collecting system exceeds 4.5 times the dry weather flow, the excess waste water is diverted into a storage interceptor tunnel which has an operational capacity of 7000 cu mts” – “15 The DWF of a collecting system is the quantity of water collected in it in the absence of rainfall”

2. “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”

3. “79. The UK 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 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 cu mts”

4. Being aware that none of these facts were correct, yet they had been used as evidence in a Court case and recorded by the Advocate General, on reading this opinion I contacted DEFRA because I felt it was right that I was allowed to tell the Court the evidence was flawed. I enclose DEFRA’s reply dated 20 February 2012.
5. I enclose a letter from Treasury Solicitors addressed to the Court dated 2 March 2012. It took 6 weeks for DEFRA to act, then I was told this letter never got to the Court as once the Court case was heard nothing could be added. I would have hated to have been the innocent man with my neck in the noose waiting for justice from the European Court of Justice if this is how it works, where evidence that is not true can be placed before an Advocate General and judged if as it were true.

6. DEFRA letter dated 16 April 2012 which is self self-explanatory - refers to 4.5 times dry weather flow, blames the AG and refers to 10,800cu.mts.

7. Page 23 of the UK Defence Document 13 September 2010 referred to by DEFRA. Paragraph 62. – “A full account of the design and operation of the collecting system serving the Whitburn area was given in the United Kingdom’s reply of 23 January 2001”

8. Page from the UK’s response to the Commission’s Reasoned Opinion dated 23 January 2001 as referred to above on page 23 of the UK’s Defence Document 13 September 2010. Item 21 gives a clear description of the flows entering the tunnel - as you can see, they do not match flow rate the Advocate General is claiming in his Opinion. In paragraph 2 it again gives a total capacity of the tunnel of 14,000 cu. Mts. again double that of what the Advocate General is claiming in his Opinion.

9. UK Response to the Additional Reasoned Opinion dated the 3 June 2003 paragraphs 26 and 27 confirm the flow rates and storage capacity of the tunnel. You will note that reference is made to 7000 cu. Mts. being stored in the tunnel before making a discharge, this has nothing to do with the design of the tunnel as it was designed that the CSOs would spill at 6 X DWF not 4.5 X DWF, the effect of this lesser spill rate means that the tunnel is not complying with the consent but also is filling quicker so there is storm foul sewerage being spilt, not storm water hence the amount of sewerage debris washing ashore.

10. This is a copy of spill events from Whitburn provided to the Commission by the UK Authorities in April 2013. This is a very interesting report when you compare it alongside the Advocate General’s Opinion I will leave it for you to judge, but remember the aim is to get Whitburn to spill less than 20 times, judging by these records it is simple - just don’t count all the discharges.

AG Opinion - 2005 - 27 discharges – volume 542,070
AG Opinion - 2006 – 25 discharges – volume 248,130
UK April 2013 2006 – 51 discharges – volume 248,130
UK April 2013 2007 – 75 discharges – volume 478,620

Looking at these totals are we the public really expected to believe that the
UK Authorities have the public interest at hear? Is this how environmental
issues are solved in the UK, where we have the European Commission
telling the UK that the spills from Whitburn must be 20 or under per year
and their remedy is simple - just count some of the discharges, little
wonder they won’t provide the requested information.

11. This is an email dated 17 December 2014 from the Head of
EU Litigation, can I ask the Committee - is this what they meant when they
referred to ‘access to justice’ under the Environmental Information
Regulations? It appears to me and I am sure the majority of UK citizens,
that the cost of taking this to Court is the last thing on one’s mind, if, as is
claimed here, the UK Agents to the Court do not have to swear on oath
that the evidence being provided is the truth and nothing but the truth,
what would be the purpose?

Mr Azam’s statements set against the information above makes a mockery
of the Aarhus Conventions claim of securing citizens rights through -
“access to information” – “public participation” – “access to justice” – can
this really be called access to justice at any cost?

Regards

Bob Latimer
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, 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.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of discharges</th>
<th>Volume discharged (m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>27 ¹⁶</td>
<td>542,070</td>
</tr>
<tr>
<td>2006</td>
<td>25</td>
<td>248,130</td>
</tr>
<tr>
<td>2007</td>
<td>28</td>
<td>478,620</td>
</tr>
<tr>
<td>2008</td>
<td>47</td>
<td>732,150</td>
</tr>
</tbody>
</table>

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 542,070 m³.
78. More specifically, the United Kingdom stresses the fact that the quality of the waters into which the discharges are made has not suffered any adverse effect as a result of the discharges themselves, a fact attested to also by the fact that the waters along the local beaches have always complied with the standards laid down by European Union law for bathing waters. 18

79. 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.

2. Assessment

80. In order to determine whether the United Kingdom has failed to fulfil an obligation in relation to the situation at Whitburn, I shall base my analysis on the two-stage test which I proposed above.

81. As regards, to begin with, the non-exceptional nature of the discharges of untreated water, the Commission has, in my view, provided sufficient evidence of this. As described above and as, moreover, remains undisputed by the United Kingdom, despite an improvement in the situation in recent years, the Whitburn collecting system continues regularly to discharge untreated water into the environment. As I have already pointed out, it is not possible to specify the number of discharges which marks the absolute boundary between exceptional and recurring events: the Commission, as we have seen, frequently refers to the figure of 20 discharges; furthermore, a report commissioned by the UK Government on the situation in London 19 concluded that the reasonable figure was an even lower limit, equivalent to 12 discharges over the course of a year. In any event, regardless of the model adopted, on expiry of the time-limit laid down in the reasoned opinion, the situation at Whitburn was without doubt characterised by discharges the number and intensity of which are indicative of an event which is recurring and certainly not occasional. As shown in the table reproduced in point 72, between 2006 and 2008, there were between 25 and 27 discharges every


19 - The TTSS report, discussed at points 90 et seq below.
Dear Mr Latimer

Advocate General’s Opinion

Thank you for your email, of 15 February to me and further email, of 16 February, to Chris Ryder. As already stated on previous occasions you should address all correspondence to me but I will only respond to points that I regard as substantively new. I have endeavoured to respond in time for your meeting this evening.

The conditions in the permit are not expressed in terms of Dry Weather Flow but rather litres per second which must be passed forward before discharges to the tunnel are allowed. These are the legal basis for the consent and would be used for assessing compliance. Dry Weather Flow is not relevant. The figure of approximately 4.5 times Dry Weather Flow is the average performance of the system and was clearly stated as such, at paragraph 10.2.1.5, of the Inspector’s report of the Public inquiry published on 25 February 2002. I cannot explain why Dr John Hogger letter in 1999 quoted 6 times Dry Weather Flow. This illustrates the danger of talking in terms of multiples of Dry Weather Flow which is usually an approximation and is why discharge permits tend to be expressed in terms of absolute pass forward flows in litres per second. The average of 4.5 times Dry Weather Flow is used to describe the performance of the system as there is likely to be a range of multiples of Dry Weather Flow at different points in the system. For further details of this particular system you would have to approach the Environment Agency (the Agency).

I can confirm the permit states the tunnel should be of at least 15,661 cubic metres. As you say the 7000 cubic metres figure relates to the capacity exceeded before a discharge is made to sea in normal operating conditions. Your request for disclosure of our pleadings is being assessed separately, but I can confirm that we do ensure our pleadings are accurate and that we agree the capacity of the tunnel already exceeds 14,000 cubic metres. The mistake in the opinion is not material to the conclusion of the Advocate General that expenditure on additional capacity would be excessive given the environmental impact of the spills. Paragraph 48 of the Advocate General’s opinion shows that the 20 spill figure originated with the Commission and recognises that it has limitations and that a case by case assessment is necessary.
I have copied this letter to recipients of your emails.

Yours sincerely

Ed Beard
Urban Waste Water Treatment Policy
Water Quality
Defra

**Direct Line** 020 7238 5323
**Fax** 020 7238 5601
**Email** edmund.beard@defra.gsi.gov.uk
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

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@tsolo.gsi.gov.uk

Please Quote: C-301/10

Your Reference:
Dear Mr Latimer

Thank you for your email to me of 22 February and your emails to Mr Beard of 6 and 10 February and 9 March. In line with the approach previously outlined to you, I am replying to you only on points that we have not addressed before.

The evidence available to me suggests that the original system was designed to pass forward around 4.5 times dry weather flow before discharge through the CSOs. These CSOs now discharge into the interceptor tunnel. I have looked at the permit, including the material that Mr Bennett sent you. I can see no attempt to mislead you and Mr Beard is correct in his statement flows in the permit are expressed in litres per second and not with reference to multiples of dry weather flow. As Mr Beard stated, you should approach the Environment Agency if you wish to discuss the detail around this.

The Advocate General's Opinion does appear to confuse some of the figures which were put before the Court. Storage at Whitburn would have to be increased by 10,800 cubic metres rather than to 10,800 cubic metres. The UK has written to the Court to draw attention to this: it is not attributable to any statements by the UK.

I do not agree that volumes pumped out of the interceptor tunnel back into the sewer for treatment should be included in the volumes that were discharged to sea via the long sea outfall as quoted in paragraph 72 of the Advocate General's Opinion.

I agree that the statements which you quote from the Agency appear to be incompatible with the view that the system operates at 4.5 times dry weather flow. I suggest you
approach the Agency to explain this discrepancy if it has not already been addressed in previous correspondence.

I do not consider that any of our pleadings in the case are wrong and it is therefore not necessary for me to contact the Commission as you suggest.

Please address future correspondence to Mr Beard and we will note its content but only respond to points which we consider to be substantively new.

Yours sincerely

Chris Ryder

Head of Water Quality
dilution waters (the approach adopted in the Guidance Note and the UPM Manual).

60. In the circumstances, the United Kingdom maintains that its system of CSO regulation is robust and in line with emerging best practice amongst Northern European states. It further contends that a flexible approach designed to maintain or improve water quality standards requires a flexible and needs-based approach to be taken to the application of BTKNEEC. This affords a discretion to Member States in identifying the best technical solution in seeking to limit pollution from a particular CSO. Adopting absolute standards such as a spill limit would undermine the needs-based approach and would often require Member States to incur unnecessary costs in pursuing inappropriate and inflexible solutions.

5. THE FACTS

A. Whitburn

Basic facts

61. The Sunderland agglomeration has a population equivalent of 225,000 and is served by a single combined collecting and treatment system. As from 1 January 2001, secondary treatment has been provided at Hendon for waste water from the whole drainage area of Sunderland, including Whitburn.\textsuperscript{56} The Whitburn part of the system provides collection of urban waste water for approximately 35,000 of the total population.

62. A full account of the design and operation of the collecting system serving the Whitburn area was given in the United Kingdom's reply of 23 January 2001 to the pre-Article 226 letter,\textsuperscript{57} its reply of 3 June 2003 to the Article 226 letter,\textsuperscript{58} its

\textsuperscript{56} In addition, UV disinfection treatment was provided at Hendon from 2002.
\textsuperscript{57} Annex A-3 paras 13-35 (pp 240-245).
\textsuperscript{58} Annex A-10 paras 12-28 (pp 536-538); this annex is incomplete as it appears in the application.
Storm water/combined sewer overflow policy

21. The amount of foul sewage flowing to each of the three pumping stations is controlled by a series of CSOs. These are effectively low sided weirs with 500mm bar screens which do not operate unless the sewage flows to the sewage treatment works exceed a set amount. This amount is set to a formula based on the population served, the trade effluent discharges and the minimum pass forward flows (see table below). Included in the calculations is an allowance for surface water infiltration of 30%. There is a wetland nature reserve at Boldon, which was created in the 1950’s and drainage for surplus water from the area was connected into the foul sewer as this was the only available disposal route. The effect of this connection has been to extend the period of influence of heavy rainfall on the drainage system in the area. The Roker Ghyll, a small urban stream, is connected to the storm sewage interceptor tunnel (not the foul sewer). The effect of this has been to increase the volume of flow entering the tunnel.

<table>
<thead>
<tr>
<th>CSO</th>
<th>Dry Weather Flow - litres per second (l/s)</th>
<th>Overflow Setting litres per second (l/s)</th>
<th>Multiple of DWF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roker</td>
<td>33</td>
<td>195</td>
<td>5.9</td>
</tr>
<tr>
<td>Seaburn</td>
<td>52</td>
<td>349</td>
<td>6.7</td>
</tr>
<tr>
<td>Whitburn</td>
<td>19</td>
<td>129</td>
<td>6.8</td>
</tr>
</tbody>
</table>

22. These CSOs formerly discharged directly to the designated bathing beaches at Whitburn and Roker. Since 1995, these CSO’s have been intercepted and are now connected to the storm sewage interceptor tunnel which collects and stores excess flows, and the Whitburn Steel storm pumping station.

23. The operational storage capacity of the storm sewage interceptor tunnel is set at 1,550m³ (of a total capacity of 14,000m³), to ensure sufficient storage capacity is available in the tunnel in the event of a “critical” storm. This is defined as a storm which is predicted to occur when a rainfall event of greater than 1 in 5 year return period occurs. An operational storage volume of 1,550m³ was chosen to minimise the risk of the storm sewage in the tunnel overflowing on to the beaches at Whitburn and Roker, due to the incoming flow exceeding the total storage volume plus the capacity of the pumps. It would be possible to delay the start of pumping storm sewage to sea until a greater proportion of the storage capacity in the tunnel was used up. However, this was tried as part of the risk assessment carried out when the scheme became operational in 1995. This resulted in a number of occasions when storm sewage overflowed on to the beaches, including some during the bathing season. A second study has recently been carried out which confirmed the 1,550m³ setting as being correct to prevent overflows except in a 1 in 5 year storm event.

24. For low volumes of storm sewage (ie amounts less than 1,550m³), or when the amount in the tunnel returns to 1,550m³, the contents of the storm sewage interceptor tunnel rejoin the sewerage system and are pumped to Hendon sewage works to receive treatment.

25. If this capacity is exceeded, screened (to a 6mm standard) storm sewage discharges are made from the Whitburn Steel storm pumping station, at a maximum pumping rate of 3,000 l/s, through the 1.2 km long sea outfall. Under most storm conditions the storm
carry any storm sewage on to nearby beaches. Also the storm sewage in the interceptor tunnel is diluted by surface water from the Roker Ghyll, and is screened down to 60mm in one dimension before being pumped out through the long sea outfall.

24. The current storm sewage discharge consent to Northumbrian Water Limited for the Whitburn Steel Storm Sewage Pumping Station sets the storage threshold of the interceptor tunnel at 2,000 m³, and requires that the company operates the in-system pumping facility (used to return flows collected in the interceptor tunnel to the collecting system for forwarding for treatment at Heiland treatment works) to the maximum extent practicable to prevent and minimise discharges to sea.

25. The actual amount of storm sewage collected in the tunnel is returned to the collecting system for treatment at Heiland, or stored before screened and pumped discharges are made to sea is likely to be more because the sewerage company has recently refined its procedures so that they now look to store approximately 7,000 m³ of storm sewage in the tunnel before making a discharge to sea. We consider this demonstrates that my authorities are using best technical knowledge to maintain this collecting system.

Account taken of urban waste water volumes and characteristics

26. The rate of dry weather flow (which includes the flow contributions from Seaburn, Roker and Whitburn pumping stations) in the collecting system is 103.8 litres/sec, and the combined sewer overflows only operate when the dry weather flow is exceeded by between 5.9 and 6.3 times; we consider the collecting system takes account of volumes of urban waste water.

27. No discharges are made through the long sea outfall unless more than 2,000 m³ of storm water is in the interceptor tunnel. This represents slightly more than 14% of the total tunnel capacity of 14,000 m³. This storage threshold was set to leave enough capacity in the tunnel to attenuate any intense localised storms in the catchment that may otherwise have caused the high-level overflows in the interceptor tunnel to discharge directly onto the beaches at Whitburn and Roker, to prevent back flooding of properties, and to provide sufficient capacity in the event of a critical storm. Again we consider this shows that account was taken of volumes and characteristics of urban waste water in the collecting system.

Conclusion

28. My authorities consider the UK fully complied with Articles 3, 4 and Annex 1(A) of the Urban Waste Water Treatment Directive concerning the collecting and treatment system which serves the Whitburn area and associated agglomeration by the deadline of 31 December 2000.
Annex (as provided to Commission by UK authorities in April 2013)

Summary of data on spill events and volumes at Whitburn (2002-2012)

<table>
<thead>
<tr>
<th>Year</th>
<th>Pump operations</th>
<th>'12-hour rule'</th>
<th>'24-hour rule'</th>
<th>Total volume spilled to sea (m³)</th>
<th>Rainfall (mm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>67</td>
<td>26</td>
<td>22</td>
<td>359,640</td>
<td>663.2</td>
</tr>
<tr>
<td>2003</td>
<td>56</td>
<td>23</td>
<td>20</td>
<td>256,950</td>
<td>477</td>
</tr>
<tr>
<td>2004</td>
<td>110</td>
<td>37</td>
<td>24</td>
<td>530,100</td>
<td>692.6</td>
</tr>
<tr>
<td>2005</td>
<td>96</td>
<td>27</td>
<td>21</td>
<td>542,070</td>
<td>693.8</td>
</tr>
<tr>
<td>2006</td>
<td>51</td>
<td>23</td>
<td>20</td>
<td>248,130</td>
<td>521.2</td>
</tr>
<tr>
<td>2007</td>
<td>75</td>
<td>25</td>
<td>23</td>
<td>478,620</td>
<td>529.4</td>
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<tr>
<td>2008</td>
<td>108</td>
<td>42</td>
<td>37</td>
<td>744,660</td>
<td>742</td>
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<tr>
<td>2009</td>
<td>93</td>
<td>34</td>
<td>27</td>
<td>762,300</td>
<td>609.8</td>
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<tr>
<td>2010</td>
<td>73</td>
<td>39</td>
<td>31</td>
<td>548,370</td>
<td>711</td>
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<tr>
<td>2011</td>
<td>11</td>
<td>9</td>
<td>9</td>
<td>163,620</td>
<td>503</td>
</tr>
<tr>
<td>2012</td>
<td>83</td>
<td>43</td>
<td>32</td>
<td>703,620</td>
<td>888</td>
</tr>
</tbody>
</table>

NB 2012 data are provisional, based on an early draft data submission and may be subject to change. Definitive figures will be available May 2013.
Dear Mr Latimer,

Further to my email below, I would like to respond to your query as follows.

I was not on oath when I wrote to the Court, and as UK Agent to the Court would not consider that to be appropriate when communicating with the Court on a point of detail on a case. I am advised by colleagues in Defra that the minimum overall physical capacity of the Whitburn interceptor tunnel, as required in its discharge permit, is 15,661m$^3$. This was rounded down to 15,000m$^3$ in the letter to the Court of Justice on 2nd March 2012. The figure of 14,000m$^3$ in the letter to the Commission from 2003, and which was referred to in the UK’s defence, and in the separate letter to you from the Environment Agency in 1999, is an even more conservative statement of this physical capacity. This lower figure presents a picture that is less favourable to the UK than the actual (higher) figure would have done.

The 7000m$^3$ figure is the operational capacity of the tunnel. Essentially this is the volume at which a discharge via the Long Sea Outfall starts being made in normal circumstances. The extra physical volume available in the tunnel (i.e. the spare 8661m$^3$) is required because the tunnel may fill up at a rate which is faster than the rate at which the waste can be pumped out via the long sea outfall.

My letter to the Court, stating that storage at the site was already 15000 cubic metres was therefore correct (rounded down from 15661m$^3$).

Please note that as of 19th December, I will no longer be in this post, and I have asked my colleague Jane Beeko to assist with any further inquiry you may have about this matter.

Regards,

Elisabeth
Dear Mr Latimer,

Thank you for your email to the Treasury Solicitor on the above case, which has been passed to me to consider. I am liaising with colleagues about this, and hope to get back to you shortly.

Regards,

Elisabeth

From: Robert Latimer [mailto:robert@latimers.com]
Sent: 04 December 2014 07:39
To: TheTreasurySolicitor
Subject: FW:

Dear Ms Jenkinson and Mr Gray

I enclose various correspondence relating to Case C-301/10 held in the European Court of Justice.

Please could you confirm that the person from the UK who provided the evidence to the European Court of Justice did so under oath?

As you can see from what the Advocate General’s says in his Opinion to what the other correspondence states there is a considerable difference.

It is important to the people of Whitburn that you answer our question

Regards

Bob Latimer

This email has been checked for viruses by Avast antivirus software.
www.avast.com
Dear Aarhus Compliance Committee

Re: UK response to Decision V/9n dated 29 December 2014.

I think it is right that I respond to this letter as it appears recommendations regarding the costs of going to Court against the UK Authorities is based on fiction rather than fact, and nothing more than words. There is no way I would approach the Court against the UK Authorities when, as you can see by the correspondence (in additional letters) the Whitburn case went before the European Court of Justice, the UK did not tell the truth and an ordinary member of the public cannot budget against that. The situation regarding Whitburn is that the UK Authorities are fully aware they will be believed above any member of the public who attempts to go to Court. The UK has nothing to fear; I have found out that if the situation gets difficult the other authorities, including the Information Commissioner, will go to their aid.

Cost and timing and access to the review procedure, although they are important, are not the main deterrent for a member of the public or an environmental support group – the deterrent is the awareness that the UK Authorities will go to any lengths to protect themselves, prevaricating, hiding evidence and making access to important information impossible and time taking (years), concentrating on avoiding access to evidence when they could easily answer a question, except that the answer might reveal the lack of responsibility for the problem or worse – reveal that the authorities actions have been illegal, even to the extent of actually lying to a court.

I will include some details of the case I have been involved in, in separate letters.

Regards

Bob Latimer