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Date: 06/03/2017 15:50  
Subject: FW: The myth of discussing costs of Court Action V/9n

## The Aarhus Compliance Committee

Re: ACCC 56<sup>th</sup> Meeting; decision V/9n (UK).

Following the audio conference on Friday 3<sup>rd</sup> March 2017 I feel it is important that I enclose the following information to show that it would be fatal, and a total waste of money, even if it was only £5000 for any member of the UK public to proceed to take the UK authorities to Court. I am sorry this explanation is long winded but feel it is necessary to explain that to discuss costs of going to Court is a distraction from the real issues which show the Environmental Information Regulations are being abused by the UK authorities to the point they are no longer fit for purpose. As I have said I am not a lawyer I am an engineer and a member of the public so my explanation of my experience of having to comply with the EIRs is first hand, making it imperative that the Committee read my account.

While I am aware that it may be claimed by some that the correspondence I am providing is not relevant to V/9n I want to stress, particularly to the Compliance Committee, that it has everything to do with V/9n. It is important that I demonstrate that the Member State (UK) is failing to fulfil its obligations – both public participation in decision-making and, in particular, access to justice in environmental matters. It is said that I have been provided with over 300 documents and I would agree as most are related to the Public Inquiry held in 2001 when it was found by the Inspector that the Discharge Consent for Whitburn Storm Sewage Station issued by the Environment Agency, was not fit for purpose. On the recommendation of the Inspector the EA were directed to issue a new consent 245/1207 with conditions, and it is these conditions that are vital to show that the Whitburn system is not complying with the consent and is polluting the local environment, hence DEFRA's claim that it is not in the public interest to disclose the requested information.

1. Consent 245/1207 condition 4. Occurrence states: -

*“c) A flow of storm sewage from Whitburn combined sewers to the interceptor tunnel shall occur only when, and for as long as:”*

*“i) the rate of flow in the combined sewer CSO location STY21 exceeds 129l/s due to rainfall and/or snow melt and shall only consist of flows in excess of that figure; or”*

It can be seen that the Whitburn sewer cannot spill until a flow of 129l/s is reached - I have provided evidence to show that figure is calculated from 6XDWF not 4.5XDWF as stated by Mr Azam. It is shocking that the UK authorities would use the EIR to prevent this breach being made public.

Referring to the same consent but this time condition 5 - Capacity *“The total capacity of the interceptor tunnel shall be at least 15661 cu metres”* It is important that this figure is remembered in relation to the Advocate General’s Opinion and the Court process.

2. I now refer to the Advocate General’s Opinion dated 23 January 2012 relating to Case EC. C – 301/10 paragraph 71 states: -

3. *“When the amount of water collected in the Whitburn collecting system exceeds 4.5 times dry weather flow, the excess waste water is diverted into a storm sewage interceptor tunnel which has a operational capacity of 7,000 cu metres”* This is neither what the consent allows nor does it correspond with the Inspector’s report from the Public Inquiry, more, it shows the UK authorities will stop at nothing if they would misled the European Court of Justice in 2012. Following that, then misleading the Aarhus Convention was so easy, but is the main reason why they consider it is not in the public’s interest to release the information.

Staying with the same AG Opinion I refer to paragraph 72 this paragraph refers to the number of discharges from 2005 to 2008 – using Whitburn as the example you can see that in 2005, 27 discharges took place.

4. In response to the numbers of discharges stated in item 3 I refer to a summary of data on spill events and volumes at Whitburn 2002 – 2012 referring to Whitburn and 2005 you can see 96 discharges were made, again it shows the European Court of Justice were misled.

5. Next is another page taken from the AG Opinion and I refer to paragraph 43: -

*“First footnote I must read in the light of the general objective of the Directive, which is to ensure a high level of environmental protection. It would be absurd to accept that untreated waste water may be discharged into the environment as a matter of course, in the absence of exceptional circumstances, simply because a collecting system or treatment plant has been designed with insufficient capacity”*

This is exactly what is happening at Whitburn.

6. Again I refer to the AG Opinion this time I refer to paragraph 79: -

*“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 increased to 10,800 cu metres. A change of that nature would result, however, in a minimum improvement equivalent to approximately 0.31% - in the quality of the receiving water, calculated on the basis of the parameters normally employed to assess bathing water. For those reasons, the study did not recommend any change to the Whitburn collecting system”*

Following the 2001 public inquiry it was shown that the capacity of the interceptor already exceeded 15,000 cu. metres you can see by the condition 5 set out in the discharge consent, the suggestion that the capacity has to be increased, along with the suggestion that only 27 discharges took place when the real figure was 96, and considering the improvement was to be 0.31% based on these spurious figures, it has to be in the public interest that they obtain the information that shows how these incorrect calculations came about. ( The correcting of the system to fulfil the direction of the court will be based on these figures rather than the true ones.)

7. Next I refer to page 10 taken from the European Court of Justice Judgement dated 18 October 2012 I refer to paragraph 71, I quote: -

*“The Member States are nevertheless required under Article 4(3) TEU, to facilitate the achievement of the Commission’s tasks, which consist inter alia, pursuant to Article 17(1) TEU, in ensuring that the provisions of the TEU Treaty and the measures taken of the fact that, where it is a question of*

*checking that the national provisions intended to ensure effective implementation of a directive are applied correctly in practice, the Commission, which does not have investigate powers of its own in the matter, is largely reliant on the information provided by any complainants and by the Member State concerned..”*

The information above and that supplied in the previous email confirms that the national provisions intended to ensure effective implementation of a directive are not being applied, how could they?

8. Environmental Law Blog which is self explanatory.

9. Next I refer to a decision notice EA/2013/0101 dated 14 September 2013 following my request for environmental information, the response seems to defy not only the statement made by the European Court of Justice above, I quote: - *‘they are largely reliant on the information provided by any complainants’* but also seems to defy Article 1 of the Aarhus Convention, I refer to paragraph 33: -

*“The Tribunal noted that responding to Mr Latimer’s concerns had required the EA to expend an enormous amount of time over the years. The tone of his emails was disparaging; he accused civil servants of dishonesty and cover up and would over a period of time have undoubtedly caused distress to individuals having to respond . While Mr Latimer undoubtedly had a very valid concern about pollution on local beaches his focus had slipped. He was now pursuing an issue which was peripheral to the question of how in the future remedial works would protect beaches. On his own account the issue was not whether there had been a deliberate and dishonest cover up of an inadequate design for the system implemented in the 1990s (although on evidence it was clear that there had simply been different ways of explaining the calculations rather than any appropriate action) but remedial steps would be taken in the future to stop pollution given the investigation by the European Commission and the decision of the European Court. However the core of this request was treading the old ground of calculations and explanations before a Public Inquiry 12 years ago. In any event he had received the full and proper explanations from DEFRA and others as to how the calculations had been performed, and he had received assurance from the UK Government that the error the Advocate general had made had been promptly corrected. He had not accepted it due to an unreasonably suspicious view of those with whom he was dealing. Although*

*he believed that he would be the person who would solve the problem for the people of Whitburn; the clear reality is that changes to the sewerage system will come about through discussions of the European Court. Any information the Commission needs from the UK Government will be supplied by the UK Government. Mr Latimer's multiple detailed requests will not facilitate this, they do not in any significant way improve public understanding and they are a severe distraction to the EA from its proper work. The Commissioner in his decision notice came to the only possible conclusion in this case. Accordingly this appeal is dismissed"*

While V/9n argues about costs of going to Court here we have a UK judge making a statement that not only defies the very purpose of the of the Convention it flies in the face of Article 1: -

*"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well being, each party shall guarantee the rights of access to information, public participation in decision making and access to justice in environmental matters in accordance with the provisions of this Convention"*

Can this really be considered access to justice when, although the UK have signed up to the Convention, the judge is telling me information the Commission requires will be supplied by the UK government, taking away my right to participate, while we argue about the cost of going to Court.

10. Next I refer to a response dated 20 January 2017 from the Water Company this is in relation to my request to carry out an internal review (I must point out that this response is 12 pages long - surely it would have been easier to provide the information). This response shows that by the Water Companies adopting the EIRs has put the UK public in a worse position when trying to obtain information. The exceptions contained in the EIRS are no longer fit for purpose, so much so the Water Company openly admits: -

*"It is reasonable that Northumbrian Water feel that the meetings, telephone calls, letters, legal action and internal reviews followed by ICO investigations, and a full public inquiry, which all span over 23 years on the same topic, demonstrates that everything possible has already been done to advise you. Further, much of the information and assistance Northumbrian*

*Water have provided to you about the Whitburn system has been provided to you voluntarily before the water industry were subject to the Environmental Information Regulations. This demonstrates NW willingness to assist and advise you even when there was no legal obligation to do so. In Decision Notice FER0230659 (discussed further below), the Information Commissioner noted that, in considering Regulation 12(4)(b), a relevant factor will be ‘whether the complainant had already received a great deal of information on the subject of the request’ You have already received a great deal of information on this subject at your request from NW and other public authorities”*

I would agree that I have received a vast amount of correspondence from NW and other public authorities, but the problem is it is the conflicting information contained in all this correspondence. The same correspondence that led the Inspector to recommend to the Secretary of State that the consent issued by the EA in 1993 was not fit for purpose. The result of the public inquiry recommended that a new discharge consent had to issued and the calculations were based on 6 times dry weather flow. Can it really be that Regulation 12(4)(b) allows the Water Company to withhold information provided as evidence to the European Court of Justice because it does not correspond with the information provided as evidence to the Public Inquiry?

11. Email from Stephen Eades *“If the ECJ should have been considering the legally under the Urban Waste Water Treatment Directive (UWWTD) of a system with 6XDWF, rather than 4.5XDWF, then you need the document that says this. This is central to proving your case”* How could anyone proceed to court, no matter the cost, without the information to prove your case.

12. In item 9 I have shown that Judge Hughes makes the statement *“...he had received an assurance from the UK Government that the error the Advocate General had been promptly corrected”* The Advocate General did not make the error, it was the UK authorities who made the error but more, while it is claimed I was given the assurances the EC wrote in response, I quote: *“It appears that the Legal Services has not been notified of any communications on this case and they explained that any communication from the UK at this stage is most likely to be returned to them because the pleading process has closed”* The UK lawyers must have been aware of this, the concern for us local people is that although the ECJ decided against the UK it was on the basis of the evidence presented by the

UK. It is clear to see that this evidence was seriously flawed yet the outcome was that the work needed would only result a 0.31% benefit to the environment, had the correct figures been provided then heaven knows what the real result would be.

13. What brought this all to a head was when looking through the papers again I found there was a section missing from the UK's response to the 2006 reasoned opinion. Although the UK authorities claimed they had provided all the information, it was the EC who provided a copy of the reasoned opinion. Following the discovery that paragraph 70 and 71 were missing I contacted the EC and they wrote back: -

*“Thank you for your email of 12 February 2016 regarding paragraphs 70 and 71 of the UK's response of 20 June 2006 to the reasoned opinion in case 1999/5132. This request was formally registered on 15 February 2016 with Gesdem reference number 2016/713” – “The letter was originally provided to you on 16 May 2014 under Gesdem reference number 2014/2113. Having reviewed our correspondence, it seems that the page containing paragraphs 70 and 71 was accidentally omitted. I apologise for this and attach herewith a copy of that page”*

Although the UK authorities responded to my many EIR requests they constantly claimed they did not hold the information and Regulation 12(4)(b) was used to block me. I cannot believe the very page that refers to 4.5XDWF was accidentally omitted, I can see the need to withhold it as not one word contained on it is true. I can provide all correspondence to back up my claims if required.

I hope that this real experience of mine will help the Committee to investigate the actual effects of the EIRs created by the UK.

Regards

Bob Latimer