

**NEW JERSEY NOISE CONTROL COUNCIL MEETING
FEBRUARY 11, 2014
MINUTES**

NCC ATTENDEES: Arnold Schmidt (Chairman, Public Member, Registered Environmental Health Specialist), Joseph Lepis (Vice Chairman, Civil Engineer), Randy Hauser (Department of Labor, Member), Eric Lieberman (Department of Health, Member), Susan Debiec (Motor Vehicle Commission, Member), Norm Dotti (Public Member, Industrialist), Dr. John Kapferer (Public Member), Steven Szulecki (Public Member-pending confirmation, AAC, Ecologist), Dr. Iris Udasin (Public Member, Medical Doctor), Eric Zwerling (Director of the Rutgers Noise Technical Assistance Center), David Triggs (Department of Environmental Protection, Council Liaison). Guest: Ralph Tragale, Assistant Director of Aviation Customer, Industry and External Affairs (NY/NJ Port Authority).

I. ADMINISTRATIVE

- The draft minutes for the January 14, 2014 Noise Control Council (NCC) meeting were reviewed and approved with minor corrections.
- Chairman Arnold Schmidt notified the NCC that he has mailed their letter pertaining to the Part 150 Noise Compatibility Study of New Jersey’s major airports to the Commissioner of the New Jersey Department of Environmental Protection.
- There has been no update on appointments and re-appointments to the NCC.

II. PART 150 NOISE COMPATIBILITY STUDY

Vice Chairman Joe Lepis gave a brief presentation on the Day Night Average (LDN) impacts of airport noise, primarily around Newark Liberty International Airport, on the local population. A guest from the Port Authority, Ralph Tragale, informed the NCC that the Part 150 Noise Compatibility Study (Part 150 study) is a voluntary federal process used to identify the population impacted by 65 Day Night Level (DNL) and how to mitigate excessive noise through operational and land use management changes, such as altering takeoff and landing patterns and soundproofing schools and other impacted buildings. It is modeled after the Port Authority’s (PA) existing noise abatement program. Legislation (Bills S2876 and A4355) was introduced to conduct a Part 150 study. New York’s governor would not sign the legislation but directed the New York Port Authority to conduct a noise study of the Kennedy and LaGuardia airports. Mr. Tragale answered numerous questions from NCC members. From the exchange it was established that loud noise from major airports impacts approximately 70,000 New York residents and 28,000 New Jersey residents surrounding Newark Liberty International Airport. Homes impacted by the noise would have to sign an “aviation easement” in order to qualify for soundproofing assistance. The easement would alert potential buyers of the impacted property that a potential noise problem exists. Funding for these types of noise studies which predominantly comes from the Federal Aviation Administration’s Federal Airport Improvement Program, is limited. Last year just 30 million dollars was available for the entire country. Large scale remedial efforts would therefore take many years to complete. Twenty percent of the remedial funds would come from Port Authority. It is unlikely to cost the state anything and could in fact result in an increase of state jobs needed for the study which can take 1.5 to 3 years to complete.

III. NOISE GUIDANCE DOCUMENT

The NCC discussed the proper location for a Noise Control Officer (NCO) to take sound level measurements and tried to clarify the meaning of taking readings “at or within” the property line of a complainant. Joe Lepis presented a two page document that he prepared to clarify his position that a NCO should take sound level measurements at the property line, unless obstructed by natural obstacles, to give a complainant the highest probability of a reading that exceeds the day or nighttime standards. Eric Zwerling pointed out that the

procedures for testing outlined in 7:29 not only includes the wording “at or within” but it allows the NCO the flexibility to “select suitable points” to take measurements based on the complainant’s ability to recreate or sleep. Steve Szulecki also pointed out that the Noise Control Regulations are a health based standard centered on sleep and speech interruption. While some restructuring of the language in the regulations may be needed to further clarify this, a majority of the NCC agreed with Mr. Zwerling and Mr. Szulecki that a NCO has the discretion to choose a suitable location at or within a complainant’s property line to take a sound level measurement. Since the Noise Control Regulations do not sunset until 2019, language clarifying this can be added to the guidance document being drafted by the NCC. A vote was tabled for a later meeting pending written language that further clarifies the issue.

IV. IDLING RESIDENTIAL VEHICLES

Noise from idling residential vehicles was discussed. A resident of South Brunswick has a neighbor with a “flow master” muffler that is very loud. At idling, it may exceed 80 dBA. The duration of the idling is unclear as is the purpose. A letter of interpretation from the NJDEP regarding a similar case indicated that noise from an idling residential vehicle is exempt from N.J.A.C. 7:29. In the past, MVC had a team of individuals that could respond to this type of noise to determine if a muffler was improperly installed or altered. Susan Dubiec of the MVC indicated that this service is no longer available. Eric Zwerling felt that intent should be considered and that New Jersey’s Noise Control Statute under N.J.S.A. 13:1G, allows the DEP and MVC the ability to establish noise limits on motor vehicles. A straw vote was taken and a clear majority of the NCC felt that noise from residential vehicles idling on private property can be enforced if a municipality has a DEP approved Model Noise Ordinance. The DEP relies on the judgment of the NCC for noise control guidance and will therefore amend its statement of policy in a letter to reflect this change in policy when the need arises.

V. SNOW REMOVAL

Due to this year’s heavy snowfall, some residents have complained about noise from snowplows. The NCC discussed whether snow plowing was a regulated source of noise. A majority agreed that it is not enforceable since it would fall under the “emergency” exemption. Language to further clarify this will be added to the guidance document currently being drafted by the NCC.

VI. OPEN FORUM

David Triggs requested the NCC’s opinion on two recent cases that were brought to his attention. The first involved commercial vehicles using an easement to enter and exit a facility and whether the vehicles could be considered a source of noise while in transit on the easement. Some important points, such as the nature of the easement and whether the use is compliant with the agreement to use the easement were discussed. While a straw vote indicated that this type of noise is enforceable, the NCC requested more information on this particular case, mainly the written language in the easement agreement.

The second issue was a request by the City of Hoboken (Hoboken) to lower their maximum penalty from \$3,000 to \$2,000 in their approved Model Noise Ordinance. While the DEP initially indicated that this would not be approved, an attorney representing Hoboken cited a state statute under N.J.S.A. 40:49-5, which apparently establishes a \$2,000 maximum penalty for municipal ordinances. He also cited a 1957 Appellate decision, State v. Laurel Mills Sewerage Corp. 46 N.J. Super. 331 (App. Div. 1957), where a penalty was challenged based on N.J.S.A. 40:49-5. The result was that the penalty issued (not noise related) was considered void because the maximum penalty in their municipal ordinance was higher than that established by the state statute. Hoboken is therefore requesting to “bring its Noise Control Ordinance in conformity with the above mentioned statute and Appellate Division decision” by lowering their maximum noise control penalty to \$2,000 to avoid a similar result. The NCC requested copies of any pertinent documents related to this before making a decision which

could impact all of the approved Model Noise Ordinances throughout the State. This will also likely have to undergo legal review by a DAG before the Department can render a decision.

VII. TABLED AGENDA ITEMS

Bylaws review and discussion
Quorum resolution discussion
Stakeholders meeting on emergency generators

VII. NEXT MEETING

The next meeting is scheduled for March 11, 2014.

Respectfully submitted:
David E. Triggs, NJDEP
In NCC Secretary Jerome Feder's absence