

N.J. NOISE CONTROL COUNCIL (COUNCIL)
AUGUST 9, 2022
MEETING MINUTES

ATTENDEES

Council Voting Members: Arnold Schmidt (Chair, Public Member), Steven Szulecki (Vice Chair, Public Member, Ecologist), Daniel Lefkowitz (Department of Health), Salvatore Fama (Motor Vehicle Commission), Randy Hauser (Department of Labor), Jack Zybura (Public Member), Dr. Iris Udasin (Public Member, Medical Doctor), Joseph DiFillippo (Public Member, Local Governing Body), and Norm Dotti (Public Member, Industrialist),

Council Candidate Members (Pending confirmation from the Governor's Office): Lynette Dooley (Local Governing Body candidate)

Rutgers and NJDEP Representatives: David Triggs (NJDEP Liaison to the Council) and Michelle Feasel (NJDEP Co-Liaison to the Council)

Members of the Public: Bob Fedinetz (Behrens & Associates Inc)

SUNSHINE LAW

Arnold Schmidt began the meeting by taking roll call and reading the Sunshine Act aloud.

PUBLIC DISCUSSION

Jack Zybura motioned to go into Public Session, with Randy Hauser seconding. All were in favor, so the motion carried. From the public, Bob Fedinetz gave a brief introduction as he previously attended the May meeting. He stated that he was there for informational purposes. Jack Zybura motioned to end the public session, with Norm Dotti seconding. All were in favor, so the motion carried.

MEETING MINUTES

June 2022: Jack Zybura motioned to approve the June meeting minutes, with Dr. Iris Udasin seconding. The motion opened the June meeting minutes for discussion. Arnold Schmidt sent the Council members his proposed revisions prior to the meeting. His amendments were to clarify that medical student George Hseech gave his presentation about noise from a gun range which was discussed at the March meeting which he attended. Dr. Udasin clarified that he gave his presentation to the Department of Occupational Medicine's faculty and residents. A vote was taken to approve the minutes as amended and all were in favor, except for Randy Hauser, and Norm Dotti, who both abstained due to being absent at the June meeting.

July 2022: Arnold Schmidt asked if the July meeting minutes needed to be voted on since the Council did not have a quorum at that meeting. Jack Zybura stated that it was still a meeting that will be posted on the Council's website so it should be voted on. Chairman Schmidt added that the minutes would just be for informational purposes, and that only the people who attended the meeting would be allowed to vote. Jack Zybura made a motion to approve the July meeting minutes as they were prepared. Daniel Lefkowitz seconded, which opened the minutes for discussion. Mr.

Zybura emailed the Council his minor revisions prior to the meeting. Chairman Schmidt wanted, “for record keeping purposes,” added after his statement about audio/visual recordings. He also wanted to add “but didn’t believe it was viable,” after his statement about holding virtual or hybrid meetings. Jack Zybura made a motion to approve the July meeting minutes as they were amended with Daniel Lefkowitz seconding. Dr. Iris Udasin, Mr. Lefkowitz, Jack Zybura, and Arnold Schmidt voted in favor. Salvatore Fama, Norm Dotti, Randy Hauser, Joseph DiFillippo, and Steve Szulecki abstained due to being absent from the July meeting.

EXECUTIVE SESSION

June Executive Meeting Minutes 2022: Steve Szulecki motioned to go into Executive Session to approve the June Executive Session Meeting Minutes. Daniel Lefkowitz seconded, and all were in favor, so the motion carried. Lynette Dooley and Bob Fedinetz stepped out of the room before the discussion began. Jack Zybura made a motion to approve the June Executive Session Meeting Minutes with Daniel Lefkowitz seconding. All were in favor except Randy Hauser and Norm Dotti, who abstained due to being absent from the meeting. Jack Zybura made a motion to end the Executive Session with Steve Szulecki seconding. All were in favor, so the motion carried.

CHAIR REPORT

- Arnold Schmidt noted that the Council’s website was still missing Joseph DiFillippo and Mark Roskein’s biographies. David Triggs stated that he believes that they were submitted but he still needs to post them on the website. Arnold Schmidt stated that the April and May meeting minutes also need to be uploaded onto the website.
- Arnold Schmidt reminded the Council members that the September meeting has been cancelled due to the absence of the Chair and Vice Chair. The next Council meeting is scheduled for October 11th.

COMMUNICATIONS

7:29 Update: David Triggs stated that the amendments to *N.J.A.C 7:29* are with him for review. Once he is finished, he will submit them to the Department’s Office of Legal Affairs for their comments.

Clove Spring Gun Range: Arnold Schmidt stated that one of the gun range complainants called him on July 29th. He informed the complainant that he didn’t have anything new to share and that there was no quorum at the July Council meeting, so the issue was not discussed.

Open Positions: David Triggs stated he hasn’t heard anything regarding the Council member appointment memo.

OLD BUSINESS

Clove Spring Gun Range: Arnold Schmidt read through the timeline of communication with the gun range representative and the complainants. He then asked what are the consequences if the Sussex County Department of Health (Sussex) does not take noise readings? David Triggs stated that there are none. It is up to the counties to decide if this type of noise source is enforceable. All the Council can do is recommend that they investigate based on the DAG’s previous comments

regarding this. He added that the DAG's examples of what could nullify the exemption was sent to Sussex. Salvatore Fama asked when Mr. Triggs and Eric Zwerling made the recommendation to take measurements, and whether they made it clear that they were speaking for themselves and not representing the Council's opinion. Mr. Triggs stated that he advised Sussex based on discussions regarding this at previous Council meetings. Mr. Szulecki stated that he agrees that it should not be presented as the opinion of the full Council. He added that Mr. Zwerling is not a member of the Council. Mr. Schmidt said that since Mr. Zwerling teaches the state's noise enforcement officers, his advice is sought after because of his position as the Director of the Rutgers Noise Technical Assistance Center and not due to his affiliation with the Council. Mr. Fama added that when Council members speak to outside parties, they should make it clear that it is their opinion and not the Council's position on a given matter. Mr. Szulecki stated that that is why the Council came up with the language that gets read when there are members of the public present. He added that there is no weight to the statements given to the public. Mr. Fama said that it carries a lot of weight in the statute. Mr. Szulecki repeated that the Council cannot advise the public on how to act, and that the Council's mandate is to advise the DEP Commissioner. Mr. Fama stated that the counties should not be reaching out to Mr. Zwerling before they go to Mr. Triggs. Mr. Triggs stated that Mr. Zwerling always copies him and Michelle Feasel on correspondence and requests for advice and that Mr. Zwerling always states that his advice is just his opinion, and the final decision must be made by the Department.

Mr. Szulecki asked how the Council wants to address the gun range issue? He suggested that the Council come up with language based on the DAG's comments and then resubmit it to the DAG for further review. If approved, it would be added to the guidance document. Chairman Schmidt stated that he feels that the Council is letting the complainants down and that he wants to make an official referral to the DEP with the complainant's paperwork. He also added that if the gun range was to lose its exemption, that doesn't mean it would have to shut down. Chairman Schmidt then made a motion that the Council submit all the documents from the gun range complainants to the Department regarding how the expansion could impact the exemption. Randy Hauser seconded, so the motion was open for discussion. Mr. Szulecki stated that this was a technical question, and the Department's DAG previously threw it back at the Council with suggestions but no definitive guidance. He added that he felt the Council should not be getting in the middle of one case and they should not be advising the public. He stated that the Council should take what they know from this case and other examples and add the appropriate language to the guidance document. Mr. Szulecki also stated that with Chairman Schmidt's motion, the documents are one-sided, and too inadequate to decide. Norm Dotti mentioned about not having enough documentation to make a valid determination of the status, and then asked who's going to get the rest? Sussex has decided not to initiate an investigation. Mr. Schmidt stated that it would be up to the complainants to get more documentation. Mr. Szulecki stated that the Council should be looking at the regulations in their entirety and not focus on one specific case. He added that it gives the impression that the Council has an authoritative position. Ms. Feasel added that telling the complainants that their case has been referred to the Department would give them a false sense of hope. The Department can't enforce this as it is Sussex's decision. A vote was taken on Chairman Schmidt's motion, and all were against it except Chairman Schmidt who then abstained. Chairman Schmidt stated that he didn't disagree with the comments but wanted to provide the complainants with some guidance.

Mr. Szulecki again stated that he thinks the Council should discuss what the guidance document would look like. Chairman Schmidt asked if a subcommittee should be formed, or if Mr. Szulecki would like to put something together. Mr. Szulecki stated that he would put something together for the October meeting but then added that everyone should contribute on the subject. Chairman Schmidt then stated that we should form a subcommittee and not waste a whole regular meeting on this. Mr. Szulecki stated that he thought it should be discussed at a regular meeting. Mr. Fama asked why we needed to provide guidance on this subject? Mr. Szulecki stated that that question proves that we need it. Mr. Fama countered that the exemption is clear and needs no explanation. Chairman Schmidt stated that it was not clear to him, so further guidance is needed. Mr. Fama asked if the Council was going to redefine “parcel.” Mr. Szulecki stated that “parcel” was not used in the exemption language. Mr. Fama stated that *N.J.A.C. 7:29* is based on parcels. Mr. Szulecki stated that this isn’t about one case, but the state as a whole, adding that they could have exempted all gun ranges in the statute, but they didn’t, as facilities constructed after 1972 are not exempt as they recognized that gun ranges could be disruptive. Mr. Dotti asked if noise complaints are logged, and where do gun range complaints fall on the list. Mr. Triggs stated that there are really only two ranges that he receives complaints about. One is the Sussex facility, and another is in Mercer County. He added that the complainants for the Mercer gun range are across the river in Pennsylvania, so no enforcement can be done. The Council decided to end this discussion with Mr. Szulecki drafting something for the guidance document for the October meeting.

Model Ordinance Update: This topic was tabled until Eric Zwerling is present to discuss.

Modified Exhaust: Arnold Schmidt stated that this issue could be combined with Eric Zwerling’s recent topic of backfiring exhaust systems. Steve Szuelcki added that he sent an email to the Council members with links about modified exhaust systems. He said that he feels there are three possible approaches that could be taken to resolve this. The first is what California does, where police make a judgement call and issue a ticket then that ticket can be contested in court. The second is to have vehicles inspected at MVC inspection stations for modified exhausts. He added that there are vehicle sound level meters for exhausts. The third approach is to set up noise cameras, which are like red-light cameras. Salvatore Fama stated that he brought this up to his upper management at the MVC and is waiting for a response. He added that the video sent out about how they modify cars so that they are out of tune was informative. He added that he’s worried that perpetrators could retune their cars before an inspection and then untune them after they pass. Mr. Szulecki stated that using options one and two would be the most effective.

Vehicle entering and exiting: Norm Dotti drew a diagram on the board to explain the vehicle entering and exiting issue to the Council. Vehicles leaving a commercial property for a public roadway will likely exceed the permissible limits. He suggested adding a guidance document on how to address this when mitigation is not possible. Mr. Dotti already drafted a document with background information on this issue. Steve Szulecki stated that he understands the issue and that Mr. Dotti’s document was confusing. It was suggested that Mr. Dotti make a condensed version for the guidance document for the November meeting.

Recording meetings: Michelle Feasel stated that it was determined in January that the Council/ Department can have virtual meetings, as it was presented as an option for the February meeting. A hybrid meeting would be the best option in terms of flexibility, but it would be more difficult to execute, and more equipment is required. Steve Szulecki stated that virtual meetings are a poor substitute for in-person meetings. Arnold Schmidt said that he was against having hybrid meetings, but that virtual meetings could be useful if another emergency arises like COVID-19. He stated that he doesn't want to have virtual meetings just because we can. Norm Dotti suggested adding a disclaimer on the website about the possibility of virtual meetings during an emergency. Mr. Szulecki pointed out that the building the Council's meetings are held in has no internet connection, so holding hybrid meetings would not be possible. It was decided that the next step would be to have the Council vote on whether they want to have virtual meetings or not.

NEW BUSINESS

No new business was discussed.

PUBLIC DISCUSSION

Randy Hauser motioned to go into Public Session, with Jack Zybura seconding. All were in favor, so the motion carried. Bob Fedinetz said that it was a good meeting and thanked the Council for having him. Randy Hauser motioned to end the Public Session with Jack Zybura seconding. All were in favor, so the Public Session ended.

ADJORNMENT

Steve Szulecki motioned to end the meeting with Randy Hauser seconding. All were in favor, so the motion carried.

NEXT MEETING

The next meeting is scheduled for Tuesday, October 11th at 9:30 A.M. possibly at the building across the street from the Operator Training Center, as there is more room available for social distancing.

Respectfully submitted by Michelle Feasel with edits by David Triggs, NJDEP Liaisons to the NCC.