

**NEW JERSEY NOISE CONTROL COUNCIL MEETING
JUNE 8, 2010,
MINUTES**

NCC ATTENDEES: J. Lepis (Chairman, Civil Engineer), A. Schmidt (Vice Chairman, Public Member-Registered Environmental Health Specialist), J. Feder (Secretary, Public Member-pending confirmation), C. Accettola (Public Member-pending confirmation), J. Kapferer (Public Member), I. Udasin (Public Member-Medical Doctor), T. Pitcherello (Member-NJDCA), N. Dotti (Public Member), Mike Klewin (NJMVC), John Surmay (Public Member – Local Governing Body), Eric Zwerling (RTNAC)

NJDEP ATTENDEES: D. Pinto, J. Castner, D. Triggs (liason to NCC).

PUBLIC STAKEHOLDERS: Ellen Falvo (Monmouth County Health Department), Bill Haas (Monmouth County Health Department), Mark Roskein (Somerset County Health Department), Joe DiFillippo (Middlesex County Health Department), Charles Hasselgren (Middlesex County Health Department), Laura Calyn.

I. ADMINISTRATIVE

Other NCC business was set aside and the meeting was devoted entirely to accepting “public stakeholders” input for revisions to the New Jersey Noise Regulations N.J.A.C. 7:29, which is due to “sunset “ in November of 2010. Meeting invitations to “stakeholders” had been distributed prior to the meeting via both email and postal mail, and a number of governmental entity representatives and members of the public were present. It was unfortunate that due to construction underway on College Farm Road, an elaborate system of detours was in place at the time of the meeting. It is hoped that all who sought to attend the meeting were able to get there. In any case, it was made clear both verbally at the meeting and via the meeting invitations, that stakeholder input would also be welcomed if submitted via email or other means subsequent to the meeting.

II. N.J.A.C 7:29 PUBLIC “STAKEHOLDER” INPUT

2.1 Overall Guidelines

Since obtaining the necessary legal and NJDEP reviews for the last set of revisions to the Regulations had taken 2 ½ years, there was consensus among the NJDEP and NCC representatives present that revisions, if any, should be limited to what was absolutely necessary in the short term. To allow time for adequate and careful consideration, significant changes would best be formulated later and reviewed either as amendments or subsequent revisions of N.J.A.C 7:29. Thus, the meeting first sought to determine whether there were any proposed candidates for changes that absolutely needed to be made in the short term, or whether the existing version of N.J.A.C. could be readopted “as is” in the interim. After this, the remainder of the meeting was devoted to formulating a list of areas to possibly address when revising N.J.A.C. 7:29.

Ms. Pinto and Mr. Castner of the NJDEP made some initial remarks to set both guidelines and direction for the meeting. One main purpose was to obtain input from knowledgeable people

outside of government. The group was asked to weigh impacts of both existing and proposed regulation on the economy of New Jersey. The group was also asked to consider the effects of any federal regulations that overlapped with New Jersey regulations. If such overlap exists, the group was asked to consider and justify instances where New Jersey rules were different, and in particular, whether New Jersey rules were more restrictive than federal standards. Overall, any penalties should be in line with impacts to the public health and welfare, and penalties should be justifiable in terms of such impacts. Any rules and limits should have a sound scientific basis, with necessary scientific evaluation performed as an adjunct. The group should also consider whether we needed to have noise rules at all in New Jersey, and what the economic impact of such rules were.

2.2 Discussion of Urgent Changes Needed Immediately

Prior to the meeting, Chairman Lepis had, via email, initiated the discussion by soliciting candidate areas for consideration in revising N.J.A.C. 7:29. As a possible issue of immediate priority, Chairman Lepis raised the need for a “grace period” to allow remediation of minor violations, and questioned whether existing language in N.J.A.C. 7:29 was consistent with “grace period” requirements. Ms. Pinto stated that State of New Jersey legal staff had been involved with the formulation of the existing language and had made it sufficiently generic to allow for differences in local enforcement consistent with “grace period” requirements. Therefore, there was no urgent immediate need for change here, although possible changes could be considered later for subsequent N.J.A.C 7:29 revisions. In discussions of possible changes during the remainder of the meeting, none were felt to rise to the level of being sufficiently well formulated and immediately needed and to be candidates for near term adoption.

Chairman Lepis subsequently put forth proposed change areas one by one for discussion and comment by the group. Public stakeholders in attendance were also invited to put forth their candidates. Unless otherwise noted, the areas that follow remain candidates for consideration in a future upcoming revision of N.J.A.C. 7:29.

2.3 Possible Elimination of the Exemption for Motor Vehicle Racetracks

Racetracks are currently exempted from N.J.A.C. 7:29. At the time that this exemption was originally instituted, the intent was to formulate separate regulations regulating racetracks. DEP/NCC developed a “Race Track” regulation in the early 1990’s, which followed a Middlesex court decision with some additional restrictions, but this was not adopted due to “better control” by the facilities and some racetracks going out of business. However, other racetracks, such as those in Englishtown and Milville, have expanded operation, creating possible additional impacts on residential areas. Although complaints regarding racetracks seem to be fewer, Mr. Zwerling, stated that this is not necessarily an indication that the problem is less. In the absence of regulation and ability to take enforcement action, members of the public develop “complaint fatigue” and cease to complain even though they remain bothered. A member of the public had appeared at an earlier NCC meeting seeking help regarding racetrack noise, and was advised to review the 1990’s rule proposal as a starting point. He was advised, however, that any changes would not be part of the November “sunset” changes. In the NCC discussion, expansion of activities by some racetracks was cited as one reason why regulation was needed.

2.4 Noise Measurement

N.J.A.C. 7:29 uses A weighted measurements by a Type 2 noise meter under slow response setting as one of the main metrics for regulation and enforcement. The slow response setting in the meter causes sound levels to be averaged over about a second period. Therefore, any sound lasting more than one second is potentially regulated under the N.J.A.C. 7:29 65 decibel day/50 decibel night limit. There was a question as to whether it was appropriate to treat a sound lasting as little as one second the same as one that was long-term continuous. While there is clearly room for improvement, no clear alternative was immediately apparent that could be implemented within enforcement constraints. Chairman Lepis indicated that 1970's versions of the model/example codes had at least four descriptors for non-impact noise and that he would provide copies of this information for later discussion.

2.5 Exemption for Testing of Verizon Emergency Electric Generators

Verizon had asked for an exemption (or an expansion of the limits to 70-75 dBA) in the noise regulations for testing the electric generators used to operate their microwave towers. This request had been raised as a safety/emergency response/preparedness issue and discussed in some detail at an earlier NCC meeting. Both then, and at the June 8, 2010 meeting, attendees present pointed out the existence of noise housings sold to quiet such electric generators, and that some generators were either designed to be especially quiet, or sold already equipped with noise control housings. Verizon had previously been invited to present arguments to the NCC as to why meeting New Jersey noise limits would be impractical, unreasonable, or impose undue hardship on their operations. Verizon has not done so. Ms. Pinto suggested that the NCC try to avoid making special exemptions such as requested by Verizon unless absolutely necessary and unavoidable. Given the situation and failure of Verizon to make a strong case, the group decided to not further pursue the granting special exemptions for testing microwave electric generators.

2.6 Truck Engine Braking (“Jake Brakes”)

Use of truck engine braking (“Jake Brakes”) creates explosively loud noises that have been the source of complaints from residents near highways with downhill grades. Representatives of affected residents have appeared before prior NCC meetings seeking help. NCC Member, Michael Klewin, who is most familiar with the issue, stated that on flat, level roads, engine brakes confer no advantage in braking performance over the use of the vehicle's service brakes, and to prohibit the use of engine brakes in such circumstances poses no safety concern. The principal importance of engine brakes is to reduce service brake wear or to minimize overheating of brakes and consequent brake fading during long, steep descending grades at high speeds. NCC Member, Norm Dotti stated that he drove a 60,000 pound fire-truck as part of his volunteer activities, and that engine braking was indeed important from a safety standpoint to avoid brake “fade” for heavy trucks traversing lengthy downhill grades. It was conceded that, since New Jersey is primarily relatively flat, geographic locations where engine braking might have safety implications were rare. Restrictions on engine braking use could be limited to those locations.

Several members of the NCC had previously worked with law enforcement officials at truck weigh stations find out how much noise a sampling of trucks created to provide a possible foundation for developing regulations. They concluded that enforcing the use of truck mufflers that meet federal regulations would go a long way towards resolving the noise problems due to engine braking. However, this issue remains open for further discussion later.

Ms. Pinto indicated that there was reluctance within the NJDEP to get involved in motor vehicle enforcement issues, since the county and local officials responsible for noise enforcement typically do not have the authority to “curb” vehicles. There is some risk associated with such motor vehicle stops, and they are therefore best left to the police, who are trained and have equipment to deal with such risks.

2.7 Rules for Distinguishing Noise from Vehicles “In Transit” from Facility Noise

Vehicles in transit traversing roads and public rights of way are not subject to rules governing facility noise. However, vehicles operating on the grounds of a facility, and not entering or leaving the facility, are subject to such regulation. Unfortunately, there is a broad “grey area” between these two situations that prompted extended discussion. Examples are trucks and buses starting and warming up their engines for a length of time prior to leaving a facility, especially at night. Chairman Lepis indicated that these might best be addressed by NJDEP idling regulations N.J.A.C. 7:27-14,15. If a vehicle crossing the curb entering a facility becomes suddenly subject to noise limits, there was a potential for creating severe and possibly unresolvable hardship for some businesses. It was pointed out that the noise rule can a source of conflict when the state noise code is used as a “Planning” consideration for new facilities. For example can a Dunkin Donut , McDonalds, or supermarket legally take delivery from a refrigerated truck used to prevent food spoilage. Nevertheless, motor vehicles involved in night operations at facilities located near residences are one of the more prominent sources of severe complaints. There was a sense that further discussion of this issue might lead to some form of achievable reasonable compromise regulation of some onerous situations. Mr. Zwerling also asserted that facility versus “in transit” issues occurred for marine vehicles on waterways, and that future discussions should include these.

2.8 Problems Due to Adjustments in Noise Calculations

Mr. Zwerling elaborated on an issue that he had raised via email prior to the meeting regarding the rules for calculating noise by a noise enforcement officer. Current guidelines directed that fractional decibel values in noise meter readings be rounded down. There was also a policy of subtracting one decibel to account for parallax error in reading an analog meter. There was also a directive to subtract two decibels to account for the inaccuracies of Type 2 meters. Aggregation of all of these adjustments results in as much as a 3.9 decibel downward adjustment in the noise readings by the noise enforcement officer. Mr. Zwerling argued that these adjustments were formulated during an era when analog meters were prevalent and that some did not apply or were unnecessary for now prevalent meters with digital displays. Furthermore the aggregate of all of the adjustments was too large and could mask problems and prevent the regulation of some noise situations that clearly should be regulated. Chairman Lepis suggested obtaining a revised DEP guidance that the “additional” decibel only apply to analog meters. Noise calculation issues are expected to be a topic in future NCC meetings.

2.9 Wind Electric Power Generators

Sounds produced by wind electric generators are an emerging issue and had been discussed at several prior NCC meetings. Bill Haas of the Monmouth County Health Department stated that due to government subsidies, such generators had become economically attractive, and that many more generators similar to the Ocean Grove facility could be expected. Furthermore, local zoning boards have tended to be non-restrictive with respect to where they are allowed. This contrasts with policy around the world for large generators, which have tended to be required to include buffer zones of 1000 feet or more separating them from residences. Wind generators also introduce some problems with respect to measurement procedures. The “A weighting” used heavily within N.J.A.C. 7:29, strongly de-emphasizes low frequencies, which are a major component of the sounds produced by wind electric generators. N.J.A.C. 7:29 includes octave band measurements, but these stop at 31.5 Hertz, which is above the frequency of sounds produced by wind generators. There was not consensus on whether the very low frequency sounds could be harmful. One attendee stated that studies to date had not shown human harm from such low frequencies. Mr. Dotti countered by describing his own experience with buildings or portions of buildings that were not usable for human habitation because the presence of strong low frequency sounds made the occupants sick (a so called “sick building” syndrome). Strong low frequency sounds have also been explored for military use since they made exposed personnel sick and unable to conduct operations.

Another issue raised was the directive in outdoor measurements under N.J.A.C. 7:29 to cease measurements at a wind speed of 12 miles per hour due to the potential for wind noises interfering with measurements. Unfortunately, depending on the design of a wind electric generator, sound levels increase with wind speed, up until the point where the turbine is either “governed” or disabled for safety and protection. Higher wind speeds create elevated neighborhood residual noises for tree branches and utility wires, which may tend to mask wind turbine noise. A meeting attendee cited his own informal measurements of the Ocean Gate facility, where he measured windy day sound levels above 50 dBA, which would violate N.J.A.C. 7:29 night limits. Thus, there may be a need to develop procedures that support valid measurement and impact evaluation in winds above 12 miles per hour.

2.10 Areas Where N.J.A.C. 7:29 is Preempted

Mr. Surmay and some others expressed frustration that a number of critical noise issues were not covered by N.J.A.C. 7:29. A notable example is the federal preemption of state regulation of aircraft noise. Aircraft noise is a big problem in Elizabeth, and has been the subject of unsuccessful litigation with the Federal Aviation Administration (FAA). Unfortunately, there were no suggestions forthcoming on how to address the federal preemption of state regulation of aviation and railroad noise.

2.11 Vote to Re-Adopt N.J.A.C. Unchanged Pending Future Action

The meeting attendees were strongly supportive of maintaining the New Jersey State noise regulation, and no opinions opposing this were voiced. Mr. Zwerling cited experience with noise

regulations in other states in which regulations were inconsistent, unreasonable, and unenforceable. Such a situation would likely prevail in New Jersey if the state abandoned its role in regulating noise. The regular contacts to the NCC by citizens and entities affected by noise seeking help, plus the adoption of the New Jersey Model Noise Ordinance by many local entities, are evidence that there is an ongoing problem that needs to be addressed.

Members of the NCC voted unanimously to re-adopt the existing version of N.J.A.C. 7:29 pending future work to develop modifications or amendments.

III. NEXT MEETING

The NCC intends to cancel meetings in July and August due to vacations and related difficulties in obtaining a quorum for action. The next scheduled meeting is on September 14, 2010.

Respectfully submitted:

Jerome Feder