

**NEW JERSEY NOISE CONTROL COUNCIL MEETING
NOVEMBER 10, 2009
MINUTES**

NCC ATTENDEES: J. Lepis (Chairman, Civil Engineer), J. Kapferer (Vice Chairman, Public Member), J. Feder (Secretary, Public Member-pending confirmation), A. Schmidt (Public Member-Registered Environmental Health Specialist), S. Szulecki (Public Member-pending confirmation, Ecologist), N. Dotti (Public Member, Industrialist), R. Hauser (DOL, Member), J. Surmay (Public Member-Local Governing Body), C. Accettola (Public Member-pending confirmation), I. Udasin (Public Member-Medical Doctor), D. Triggs (NJDEP).

I. ADMINISTRATIVE

The meeting was held at the Rutgers Cook Campus Operators Training Center. Minutes of the October 13 meeting were approved. The Nominating Committee had met prior to the meeting and proposed Joe Lepis as Chairman, Arnold Schmidt as Vice Chairman, and Jerome Feder as Secretary going forward; this proposal was adopted by the NCC members present. It was decided, in view of the needed work on the Model Code and “sunset” of the NJ State Noise Code, that the group meet on December 8th. A decision will be made as to whether to hold a January meeting at the December meeting. Inclement weather procedures were discussed and it was decided that primary notice of cancelled meetings would be via email, but that Chairman Lepis could be contacted via cell-phone by members who had questions regarding whether a meeting would be held.

There was some discussion of what to do about members who had not attended meetings for some time. It was decided to wait until new governmental administrations had taken office before taking action.

As an adjunct to the discussion of meeting minutes, there was some further discussion of the Raceway Park situation. Mr. Szulecki pointed out that a judge had already established conditions to reduce noise. However, possibly a major problem for Mr. Marc Levy, who had brought the problem to the NCC, is the possible support for the raceway operation by some local officials. They may have therefore failed to actively support his efforts to gain noise relief, leaving Mr. Levy with only a legal action option, which could be expensive.

II. MODEL CODE

The remainder of the meeting was spent on the Model Code. Chairman Lepis brought to the meeting copies of the Model Code in which he had denoted, based on earlier discussions, sections that needed more work.

2.1 Enforcement

Mr. Schmidt distributed material related to enforcement of the Model Code – specifically the official “Notice of Violation (NOV)” form and material describing prior legal action that led to a “grace period” to allow for correction of cited violations. Mr. Schmidt pointed out that the proposed “Enforcement” section of the Model Code was inconsistent with prior legal rulings and the NOV form. The required sequence of events is that an enforcement officer, upon encountering a believed violation, may issue a “Notice of Violation,” which would start a “grace period” during which the purported violator would have the opportunity to correct the violation, but during which no penalty could be instituted. The enforcement officer could then revisit the site at the end of the “grace”

period and if the violation was found to be still in effect, then a “Notice of Penalty Assessment” issued. Opportunity for legal challenge by a purported violator occurs only in response to the Notice of Penalty Assessment; a Notice of Violation cannot be legally challenged. Mr. Schmidt volunteered to redraft the relevant sections of the Model Code to be consistent with the legally required sequence of events. It was also proposed that the Assistant Attorney General be invited to a later meeting when the NCC was seeking to revise the State Noise Code to discuss enforcement issues related to transient and moving violations to see if procedures could be worked out to establish effective enforcement.

2.2 Definition of “Emergency Work”

There was an extended discussion of the definition of “Emergency Work” which included issues of: a) inclusion of emergencies that were not emergencies for the general public, but did constitute emergencies for affected individuals; b) whether the “emergency” should be tied to a specific locality¹; c) whether some method of occurrence frequency could be applied to distinguish emergencies. Mr. Dotti volunteered to draft updated language for consideration by the NCC.

2.3 Definition of “Muffler” and “Sound Reduction Device”

Previous discussions had made clear that apparatus for controlling noise was not limited to mufflers. An example would be an enclosure for controlling sound emissions. It was decided to allow Mr. Klewin to review and possibly propose revisions to the definition of “muffler.” Mr. Szulecki volunteered to work on a proposed definition of “sound reduction device.”

2.4 “Animal Noise Disturbance”

Material in the draft code defining an animal noise disturbance replicated material on animal noise in the “Restricted Uses and Activities” section; the definition was deemed unnecessary and was eliminated.

2.5 “Sound Production Device”

There was discussion of whether the definition of “sound production device” earlier proposed by Mr. Zwerling really should be limited to music and voice. It was decided to institute this limitation and changes were made to this definition.

III. NEXT MEETING

The next scheduled meeting is on December 8, 2009.

Respectfully submitted:

Jerome Feder

¹ This discussion was prompted by a previously cited violation situation in which a purported violator, who ran a night operation that supplied materials used for emergency work, claimed an “emergency” exemption. Since the night operation, was in fact part of the normal mode of operation of the business, the NCC had felt that the application of emergency status to this situation was inappropriate.