

NEW JERSEY NOISE CONTROL COUNCIL (NCC)
NOVEMBER 13, 2018
MEETING MINUTES

ATTENDEES: Arnold Schmidt (Chairman, Public Member), Steve Szulecki (Vice Chairman, Public Member, Ecologist), Salvatore Fama (Motor Vehicle Commission), Randy Hauser (Department of Labor), Dr. Iris Udasin (Medical Doctor, Public Member), John Kapferer (Public Member), Jerry Feder (Public Member), Joseph DiFillippo (Candidate), Eric Zwerling (Director, Rutgers Noise Technical Assistance Center), David Triggs (NJDEP Liaison to the Council) and Michelle Feasel (NJDEP Co-Liaison to the Council).

PUBLIC: Mark Roskein (Bridgewater) and Jack Zybura (Lewis Goodfriend and Associates).

MEETING MINUTES

The meeting minutes were not approved since the NCC did not have a quorum (Dr. Udasin had to leave early). Chairman Schmidt re-emphasized the importance of reviewing the minutes before the meeting to save time.

CHAIR REPORT

- No news to report on NCC appointments.
- Chairman Schmidt received an e-mail from a member of the public regarding noise from landscaping equipment such as leaf blowers. The author of the e-mail expressed frustration over local municipalities that decide to not adopt the Model and county health agencies that cannot enforce resident-to-resident complaints. One of the reasons that counties don't enforce resident-to-resident complaints is the timeliness of a county inspector making it there before the work is completed. The state does not make it mandatory for municipalities to adopt the Model because it would result in additional costs and many towns are small, rural and lack the resources to send inspectors to the certification training and to purchase and maintain the required equipment. Rural towns often do not have as many noise problems. Any noise regulation that limits or eliminates the use of leaf blowers could result in a loss of revenue for landscaping businesses that rely on the fast turnover of work in order to make a profit. Raking large properties would not be feasible. It could also result in people cutting down trees to reduce the amount of leaves they have to deal with. Municipalities can adopt a stand-alone ordinance that specifically deals with the use of landscaping equipment by limiting their use or eliminating it entirely. Chairman Schmidt stated that this will be discussed further at the next subcommittee meeting.

NCC COMMUNICATIONS/CORRESPONDENCE

Refer to the Chair Report.

OLD BUSINESS

- *Proposed Amendments to N.J.A.C. 7:29:* The NCC did not have a quorum so the following proposed amendments could not be approved. Regardless, these amendments approved by the subcommittee were discussed:

Proposed by David Triggs

§ 7:29-1.1 Definitions

"Commercial facility" means any premises, property, or facility involving traffic in goods or furnishing of services for sale or profit including, but not limited to:

1. Banking and other financial institutions;
2. Dining establishments;
3. Establishments for providing retail services;
4. Establishments for providing wholesale services;
5. Establishments for recreation and entertainment;
6. Office buildings;
7. Transportation;
8. Warehouses; and

9. Establishments providing living accommodations which exceed six dwelling units, including, but not limited to, apartments, condominiums, co-ops, hotels, motels, and dormitories, when they are the source of the sound that is being investigated and the source of sound is a ~~heating, air conditioning, pool filter unit or system, or outdoor amplified sound system.~~ mechanical, electronic or sound production device.

Rationale: To add condominiums as a source and expand the types of sources of noise.

Add definition to 7:29

“Sound production device” means any device whose primary function is the production of sound, including, but not limited to any, musical instrument, loudspeaker, radio, television, digital or analog music player, public address system or sound-amplifying equipment.

Rationale: Since sound production device is included in 7:29, a definition is needed. The definition already exists in the approved Model.

§ 7:29-2.11 Qualifications of enforcement personnel

For the purposes of this chapter, an employee representing an authorized enforcement agency shall be considered qualified to make noise measurements and enforce the State's Noise rules or a municipal noise ordinance approved by the Department, as the case may be, if such person completes a noise certification course, and is recertified, at least once every two years, at a noise certification course which is offered by the Department of Environmental Sciences of Cook College, Rutgers, the State University. The Department of Environmental Protection ~~shall~~ may provide an one extension for recertification on a case-by-case basis beyond the two-year period. ~~for a person until the next time the recertification course is offered.~~ Such requests shall be made in writing by submitting a DEP-approved form to the Department at least 10 working days prior to the expiration of the person's certification unless documentation of an emergency is provided. If a scheduled course is canceled, an extension to the two-year period is automatically granted. The certification remains valid during the extension period.

Rationale: A new form was created which is required for an extension. More clarity was needed to describe the procedures and to point out that an extension keeps the certification valid until the next available class.

PUBLIC DISCUSSION

Steve Szulecki motioned to open the meeting to the public and Arnold Schmidt seconded. All were in favor.

Jack Zybura, representing Lewis Goodfriend and Associates, presented some recommended amendments to 7:29.

Mr. Zybura asked, based on the proposed amendments to the definition of “Commercial facility,” who has ownership of the source of noise. Because of the discussion, it was agreed by the NCC that the following should be added at the end of the definition: ***“owned and operated by the commercial facility.”***

Steve Szulecki motioned to accept the addition and Arnold Schmidt seconded. All were in favor, so the motion passed. (It should be noted that Dr. Udasin was present at this portion of the meeting so there was a quorum.)

He also presenting the following in writing via e-mail:

- 1.2(a)2iii: “impulsive sound which repeats more than four times in any hour shall not exceed 50 dBA.” The correlating section of the Model code adds “shall be measured as continuous sound.” I think the “continuous sound” should be added to the 7:29 language, but really I am mostly advocating that the language should be consistent between the Model and 7:29. On a related comment, the model still says “80 decibels” and “50 decibels” while 7:29 says “80 dBA” and “50 dBA.” In this case I think the Model should be updated to the “dBA” language.

Discussion: Mr. Zybura asked if residual sound measured as L50 was discussed at the subcommittee meeting. It was not and would require a detailed discussion as it would drastically change how enforcement is conducted in the state.

- 2.9(b)1iv: “If level variations exceed plus or minus 2 dB...discontinue the measurement.” What exactly does this mean? That the octave band limits are not enforceable if the levels vary by more than 2 dB in any band? If that is the intent, language should be added for clarification. “Discontinue the measurement” is also present in the Model, in the Note for Table III.

Discussion: Mr. Zybura asked if “Discontinue the measurement” means you no longer must measure for octave band. The answer was yes.

- 2.10 Table 1 Step 1: What is the “maximum measured level of the neighborhood residual sound”? I think of an Officer “eyeballing” the meter for the highest ambient levels, exclusive of extraneous events and the source contribution. Why not use an L50 or even L90 statistic to do this while the source is off? We generally use the L90 to document ambient levels (though not always “maximum ambient”) and NYC uses the L50 to determine the level exclusive of extraneous sounds. I’d like to see language added (either in 7:29 or in the guidance document) to allow the use of a statistic to determine the maximum residual sound level. What I’d really like to see is the use of L90 for both Total and Residual, as quite often you get a negative difference when comparing the Lmin Total with the maximum Residual (even after excluding extraneous events). Can I use a 10 dB correction factor in this case? If so, that should be added to Table 1.

Discussion: This would result in a lengthy discussion and it would require significant changes to 7:29. With the current deadline, it would have to be tabled.

Randy Hauser motioned to close the public session and Arnold Schmidt seconded. All were in favor, so the motion passed.

Amendments proposed by Salvatore Fama:

N.J.A.C. 7:29-1.5 Exceptions

Add

3.5 Emergency signaling devices for occupational hazard such as horns, bells, whistles as required by Occupational Safety & Health Administration (OSHA) 29 Code of Federal Regulations (CFR);

Rationale:

Emergency signaling devices are required by federal and state law. New Jersey State Law has adopted all federal OSHA laws by reference for State employees. Federal law governs the rest of NJ industry. Since these devices are required by federal and state law; they should be exempt from this regulation. A list of the laws that require emergency signaling devices for occupational hazards are as follows:

(29 CFR) 1926.1415, 1926.602, 1926.601, 1917.43, 1910.165, 1926.1401, 1915.80, 1910.178, 1910.272, 1910.265, 1910.261, 1910.109, 1910.266.

Discussion: Mr. Fama contended that backup beepers are required by state and federal law and should therefore be exempt. Eric Zwerling countered that a blanket exemption is not needed as there are other means to control the noise and a blanket exemption would allow a facility to take advantage of that to the detriment of nearby receptors. Based on his knowledge of the courses he has taught and the consultants he has discussed this with, he has not seen this as a problem that cannot be resolved without granting a blanket exemption. Further discussion will take place at the next subcommittee meeting.

4.5 Wildlife;

Rationale:

7:29-2.1 defines a "Sound source" as any animal. If the noise code was not written specifically to regulate wildlife sounds emitted from commercial properties, then wildlife should be specifically excluded from the regulation. The current version of the noise code does not exclude wildlife.

Discussion: Mr. Fama brought up the fact that "animal" is listed as a source under the definition of "sound source" under 7:29-2.1. The definition is broad and does not differentiate between sounds from "peepers" or geese with caged animals in a zoo or kennel setting. Because of the discussion, some NCC members agreed that the definition adds no informational content and should therefore be removed. Instead of "wildlife," it was agreed that "wildlife not under the control of the source," should be added as an exemption as 14., at the end of 7:29-1.5. This will be discussed further at the next subcommittee meeting.

Neither proposal was voted on since there the NCC did not have a quorum.

Eric Zwerling again noted that impulsive noise at night is problematic and he would therefore like to propose interior limits in 7:29, although it appears that there might not be enough time to accomplish this. If it's too late to include in 7:29, he would like to add it to the Model.

Arnold Schmidt would like to continue the discussion regarding landscaping equipment. At some point the NCC must establish, in writing, why 7:29 does not cover all sources of noise such as leaf blowers.

NEW BUSINESS

Jerry Feder commented that NCC members should be more open to allowing non-members who have attended the meetings for many years, the ability to comment without officially opening and closing the meeting to the public. Chairman Schmidt disagreed, as it would conflict with Robert's Rules, and it would open the floor to anyone from the public who happens to attend the same meeting.

EXECUTIVE SESSION

The NCC did not meet in Executive Session.

NEXT MEETING

The next meeting is scheduled for Tuesday, December 11th at 9:30 A.M.

Respectfully submitted by David Triggs, NJDEP Liaison to the NCC